June 26, 2012

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Schumm presiding and members Amyx, Carter, Cromwell and Dever present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. Proclaimed the month of July, 2012 as Parks and Recreation Month.

B. CONSENT AGENDA

Mayor Schumm requested that item number 13, agreement with Convention Sports & Leisure, be pulled from the consent agenda for separate discussion.

It was moved by Amyx, seconded by Cromwell to approve the consent agenda as below, minus item number 13. Motion carried unanimously.

1. Approved City Commission meeting minutes from 06/12/12.

2. Received minutes from various boards and commissions:
   Parks & Recreation Advisory Board meeting of 06/05/12
   Lawrence Douglas County Bicycle Advisory Committee meeting of 05/15/12
   Public Incentives Review Committee meeting of 04/24/12

3. Approved claims to 270 vendors in the amount of $3,192,705.45.

4. Approved licenses as recommended by the City Clerk's Office.
   Drinking Establishment license for On The Border, 3080 Iowa

5. Bid and purchase items:
a) Set a bid opening date of July 17, 2012 for Bid Number B1240 Contractor Services to Complete Emergency Sanitary Sewer, Force Main, and Air Relief Valve Repairs.

6. Adopted on second and final reading, the following ordinances:
   a) Ordinance No. 8749, relating to weigh limitation for certain trucks designed and used for garbage, refuse, solid waste disposal, mounted fertilizer spreaders and animal dung spreaders.
   b) Ordinance No. 8750, amending Chapter X relating to the disability provisions of the City of Lawrence Human Relations Code.
   c) Ordinance No. 8751, establishing the new crime of refusing to submit to a test for the presence of drugs or alcohol while operating a motor vehicle.
   d) Ordinance No. 8752, pertaining to the examination and licensing of certain trades, to comply with amendments to state law that will be effective July 1, 2012.

7. Adopted Resolution No. 6977, approving Tax and Securities Compliance Procedures for the city.

8. Accepted dedications of easements for Final Plat, PF-5-3-12, for Oread West No. 16 (formerly Research Park), located at 0 Research Park Drive. Submitted by Paul Werner Architects, for Alvamar Development Corporation, property owner of record.

9. Approved a Site Plan, SP-5-33-12, for sidewalk dining at 934 Massachusetts Street (Minsky’s Pizza) and approved sidewalk dining and hospitality license. Submitted by Paul Werner Architects, for Round Corner Building Corp, the property owner of record.

10. Approved a Site Plan, SP-5-39-12, for the expansion of a non-conforming use for Harbour Lights, located at 1031 Massachusetts Street, including a rooftop hospitality deck and a building addition for a ramp for wheelchair accessibility. Submitted by Mike Myers of Hernly Associates for David Heinz, the property owner of record.

11. Approved the 2012 Investment Policy.

12. Authorized staff to apply for an Assistance to Firefighters Grant for station video conferencing. The grant requires a twenty percent (20%) local match, for an estimated cost of $71,000.

13. THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Authorized the City Manager to execute an agreement with Convention Sports & Leisure in the amount of $25,000 for economic impact study for the proposed sports village/recreation center.

14. Authorized the City Manager to execute an agreement with the State of Kansas for capital and operating assistance funds in the amount of $250,986 for expenses associated with the City of Lawrence transit system.
15. Authorized the Mayor to execute a Reciprocity Agreement with Johnson County Contractor Licensing, allowing for the issuance of reciprocal licenses to contractors licensed by Johnson County Contractor Licensing and the City of Lawrence under certain conditions.

16. Approved as signs of community interest, a request from the Nordic Heritage Festival to place temporary directional signs located in various rights-of-way in the City on Saturday, October 6, 2012.

Regarding consent agenda item number 13, agreement with Convention Sports & Leisure, David Corliss, City Manager, said we were recommending entering into this contract in order to study the economic impact of the proposed facility. The vendor specializes in this type of analysis. Our economic development coordinator has worked with this firm before. We looked at several proposals and this one was the best. This is really just part of our due diligence in considering this proposal and our investments in it.

Carter said he wondered if we could ask if they could look closely at hotel room nights, and give us an understanding of the type of events and the number of room nights they generate, so we can consider that later as we start booking events.

Corliss said those were good suggestions and we would talk about including that in their study.

Schumm said he pulled this from consent because there are some comments that this proposal is being rushed through without enough information, but this contract is part of our fact finding and due diligence.

Corliss said we would try to have this on our August 7 meeting.

Mayor Schumm called for public comment.

KT Walsh said Haskell and KU are both a long way from the proposed center and we should have some outreach to them, especially Haskell.

**Moved by Cromwell, seconded by Carter,** to authorize the City Manager to execute an agreement with Convention Sports & Leisure in the amount of $25,000 for economic impact study for the proposed sports village/recreation center. Motion carried unanimously.
C. CITY MANAGER’S REPORT:

David L. Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. Conduct public hearing on the establishment of a Neighborhood Revitalization Area (NRA) at 810/812 Pennsylvania (the Cider Building). Consider adopting on first reading, Ordinance No. 8753, establishing the revitalization area; consider approving the NRA plan, and consider authorizing staff to finalize a city-county-school district cooperation agreement concerning the administration of the NRA plan and authorize the Mayor to execute the agreement.

Aron Cromwell stated that he was recusing himself from this item because of an ongoing business relationship. He left the room at 6:53 p.m.

Diane Stoddard, Assistant City Manager, presented the staff report.

Amyx said the cost benefit ratio was 1.29.

Stoddard said yes.

Moved by Amyx, seconded by Dever to open the hearing. Motion carried 4-0 with Cromwell abstaining.

KT Walsh said the East Lawrence Neighborhood Association was in favor of granting the NRA. The developer had worked well with the neighborhood.

Leslie Soden, East Lawrence Neighborhood Association, said this was a perfect example of creative place making.

Moved by Amyx, seconded by Dever, to close the public hearing. Motion carried 4-0 with Cromwell abstaining.

Amyx said the cost benefit analysis indicated a 1.29 benefit. Redevelopment has not come in this area until now. He said PIRC’s recommendation swayed his vote more than anything.

Carter said he agreed. It meets the criteria now, but the return on investment can and should be leveraged. We have an atmosphere that attracts creative people. This has his support.
Dever said it is a great opportunity. The developer had worked with the city and the neighborhood. This is a great chance to use some of our unique qualities in our community.

Schumm said he couldn’t think of a better site and rehabilitation. This ought to be the poster child of success for the Neighborhood Revitalization Act.

**Moved by Dever, seconded by Carter**, to adopt on first reading, Ordinance No. 8753, establishing the revitalization area, approve the NRA plan, authorize staff to finalize a city-county-school district cooperation agreement, and authorize the Mayor to sign the agreement, and authorize staff to execute a performance agreement with the applicant. Motion carried 4-0 with Cromwell abstaining.

Cromwell returned to the Commission Chambers at 7:00 p.m.

2. **Consider the following items related to 900 New Hampshire:**

   a) **Consider applicant appeal on HRC determination. Conduct public hearing and make a determination that there is/is not a feasible and prudent alternative to the proposal and make a determination that the proposal includes/does not include all possible planning to minimize harm to the listed properties.**

   b) **Consider adopting on first reading, Ordinance No. 8728, removing the property on the east side of the 900 block of New Hampshire from the current Downtown 2000 redevelopment TIF (tax increment refinancing) district and refer to the Public Incentives Review Committee to consider the proposed project.**

   For a transcript of Regular Agenda Item Number 2, see the attached Appendix A, transcript prepared by Candace K. Braksick.

E. **PUBLIC COMMENT:**

None.

F. **FUTURE AGENDA ITEMS:**

David Corliss, City Manager, outlined potential future agenda items.

G. **COMMISSION ITEMS:**
None.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Cromwell, seconded by Dever, to adjourn at 12:16 a.m. Motion carried unanimously.

APPROVED:

__________________________________________________________________________
Robert J. Schumm, Mayor

ATTEST:

__________________________________________________________________________
Jonathan M. Douglass, City Clerk

EXHIBIT A to City Commission Meeting Minutes of June 26, 2012: Transcript of Regular Agenda Item Number 2, items relating to 900 New Hampshire, prepared by Candace K. Braksick.

1 BEFORE THE LAWRENCE CITY COMMISSION
2 LAWRENCE, KANSAS
3
4 Re: Application for Design Review
5 of 9-10, L.C., No. DR-12-185-11.
6
7 June 26, 2012
BEFORE:
Bob Schumm, Mayor
Mike Amyx, Commissioner
Hugh Carter, Commissioner
Aron Cromwell, Commissioner
Mike Dever, Commissioner

City Hall
Lawrence, Kansas

APPEARANCES:
For the City:
Toni Wheeler, City Attorney
Randall Larkin, Senior City Attorney

For the Applicant:
Dan Watkins
William Fleming

For neighborhood homeowners:
Ronald Schneider

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MAYOR SCHUMM: All right, now we're on No. 2. Couple things, please. We want to hear each and every speaker that wants to speak. You will be allowed five minutes; if you can do it quicker than five minutes we would appreciate it. At four and a half minutes -- we've got our shock clock right here. At four and a half minutes there will be a gentle sounding tap on the shoulder that sounds like this (indicating). That means that you've got
to wrap up and be prepared to sit down in the
next 30 seconds, and we would appreciate your
help with that.

Be sure and sign in. And there is
absolutely no applause for any speaker, this is
a business meeting and we need to conduct it as
such, so we'd appreciate your accommodation
with regards to these conditions for the
meeting.

Staff has some special instructions
tonight because we do have a court reporter.

MR. LARKIN: Good evening, mayor,
commissioners, ladies and gentlemen. My name
is Randy Larkin and I am a Senior Assistant
City Attorney and tonight before us is an

appeal from a decision of the Historic
Resources Commission.

Before I get to the legal substance of the
issues tonight there are a couple of
preliminary matters we need to take care of.
In reviewing a decision of the Historic
Resources Commission the City Commission acts
in a quasi-judicial capacity. Because that is
the case and because there is a likelihood that
there may be further proceedings after tonight
the City welcomes Mrs. Candace Braksick, a
certified court reporter, tonight. She will be
transcribing all the events and everything that everybody says tonight for future record in case it is needed.

Because that is the case, because she is taking down everything, there are a couple guidelines we would like all speakers to follow tonight. First, when speaking speak audibly and distinctly. The court reporter cannot take down whispers, mumbles, nods, gestures, facial expressions.

Please refrain from speaking over one another; if you allow the person speaking before you to finish their thoughts before speaking that would be greatly appreciated.

And third, members of the public, as you approach the stand and state your name state it clearly and possibly spell your name for the court reporter that would be a great help.

Thank you, Mrs. Braksick, for your services tonight.

Also, because the City Commission is acting in quasi-judicial capacity we, the city commissioners need to disclose ex parte communications. Ex parte communications are communications that individual commissioners may have had with individuals outside the
confines of this room regarding the issue, and
the purpose of the disclosures is so that all
of the decision-makers have the same
information upon which to make their decision,
that is, they are working from a level ground.
It also allows opponents or proponents of the
project to possibly rebut something that may
have been heard outside this room, so it
provides a fairer ground for everybody.

So, commissioners, if you would like to do
ex parte communications at this time that would
be great.

MAYOR SCHUMM: Okay. I'll start off by
saying that I have had numerous e-mails from
members of the public both pro and con, nothing
new information in that. There was a proposal
by a Town Peterson, but I think it is in the
public arena, in terms of tonight's material
and it's been online.

I did have a meeting, and I was trying to
recall the date today, but it was prior to the
HRC meeting so whatever date that was, prior to
that last date, probably a week or so in
advance of that, or maybe ten days, in which I
was in a meeting with the city manager, the
development team, I don't remember exactly who
was there but there was four members, the
hotelier, I think Mike Dever was there, and I
don't recall who else was at that meeting,
maybe no one else.

At that meeting we talked about the fact
that the, I told them that I thought the size
was too large, that the commission, they didn't
have three votes on the commission, because I
had previously visited with each commissioner
individually to find out where they were at so
I could help guide this project in a manner

which would be consistent with what the HRC was
saying.

At that meeting I asked if they would
consider moving the project from the south side
of Ninth and New Hampshire to the north side
where Black Hills is, indicated that was
impossible because of lengths of leases at that
location, as well as some tenant problems they
had. At that meeting they did offer to reduce
the structure by one floor. That's it.

Sir.

MR. CORLISS: Bob, I sent you an e-mail
earlier today. That meeting was on April the
10th.

MAYOR SCHUMM: April the 10th, thank you.
I can think of no other ex parte contacts I
have had. I walked out around the block when this started, I met some neighbors and just said hi but there wasn't anything of any interest there that no one would have any value in knowing.

So want to go next?

COMMISSIONER DEVER: Sure. We, I was a part of a meeting with the potential developer of this project at least on one occasion at City Hall. Those meetings were attended by myself, the mayor, and several staff members. I have attended an East Lawrence Neighborhood Association meeting several months prior to that when the original proposal was submitted and answered questions related to the structure and that was before I think some of the issues regarding the Historical Resource Commission's findings were made clear and I saw that there might be potential for a conflict if I discussed it any further so I tried to shy away from, you know, having conversations about this.

When the second proposal came forward, you know, I think we've, I've talked with individual residents via e-mail, over the phone, just trying to have some sort of feedback from them about the structure and how
important that neighborhood is to them but nothing really of any substance with any other party involved in this process.

MAYOR SCHUMM: Okay. Commissioner Amyx.

COMMISSIONER AMYX: Again, like the rest of the commission members, I have had quite a few e-mails and I have had the opportunity to visit with a number of people in my business.

It seems like this has been a big topic the last several weeks especially, you know, up and down Massachusetts Street so I have had the opportunity to have a lot of communication with a lot of people and just general discussion, people offering comments to me and things. Again, as the mayor mentioned, Mr. Peterson's proposal, you know, but here again, we all have copies of that so there's no new information there.

Quite a few phone calls with individuals but I don't think really any new information that no other member of the commission was not privy to, so about where I'm at.

MAYOR SCHUMM: Thank you.

COMMISSIONER AMYX: Uh-huh.

COMMISSIONER CROMWELL: I have had numerous contacts with both proponents and
opponents of the proposed project. These happened through e-mail, telephone, and in person but none of those contacts contained any material which is not currently in the public record.

COMMISSIONER CARTER: I would say the same, specifically with the development group, I had two meetings, one was before April 10th, one was after, I don't know the dates, so anyway, one was pre discussions of the changes with the initial -- first one was just a review of the project, just educational, second one I think the developer had indicated that they'd heard I had some issues with the project, wanted to know what those were, I indicated I was really, really just waiting on a feasibility study, those were my main questions, and we did go ahead at that time, though, and they reviewed the changes that had been made since the previous submission of the plan. That was it. Other than that lots of e-mails from folks but nothing, nothing material and nothing that's not out there already.

MR. LARKIN: Thank you, mayor, commissioners.

Tonight the City Commission hears
Application for Design Review of 9-10, L.C., No. DR-12-185-11. The proposed project, which the succeeding speakers will describe in much more detail than I will, involves a proposed structure on the vacant lot at 900 New Hampshire Street. Because the property is within the environs of several historic structures, the Downtown Historic District, and the North Rhode Island Residential Historic District, before the project could proceed it had to be presented and reviewed by the Historic Resources Commission. On April 30th, 2012, the Historic Resources Commission considered the project and determined that it would encroach upon, damage or destroy the North Rhode Island Residential Historic District.

Accordingly, under state law, the project cannot proceed unless tonight the City Commission determines, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use.

Now, on March 6, 2012, in anticipation of
a previous hearing regarding one of the earlier incarnations of this project, the City's Attorney's Office drafted a Memorandum kind of outlining the law relating to the City's decision in this matter. On June 21, 2012, the City Attorney's Office prepared a Supplement to that Memorandum and it confirms that there has been no intervening change in the law and updates certain events but specifically it notes that the last page of the March 6 Memorandum, which encompasses paragraphs 31 through 36, are now moot. Those related to the City Code and Certificate of Appropriateness. At the April 30, 2012, hearing those were granted so those are not part of tonight's appeal.

So against that backdrop I now turn now to the substantive discussion of the March 6 Memorandum outlining the City Commission's scope of review and its standard of review. There are really three issues I want to talk about. One is relevant factors and the feasible and prudent alternatives and then the program and planning to minimize harm, so I will do that separately. At the outset, in 1977 the state legislature enacted the Kansas State Historical
Preservation Act. The Act provides that any project that is going to be built within the environs of an historical property must be reviewed by the State Historic Preservation Officer. In some cases the State Historic Preservation Officer may delegate that authority to local governments and in this case has an agreement with the City of Lawrence to do so and the City of Lawrence has appointed the Historic Resource Commission to perform the duties of the State Historic Preservation Officer. As was discussed earlier, on April 30th the Historic Resources Commission held a hearing in this case.

The burden of establishing that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resides with the proponent of the project, so it is on the applicant. They have the burden of proof.

Discussing the scope of the Commission's review, the Commission can consider, what the scope of review is what materials, testimony and other evidence that the City Commission may consider in making its decision tonight and in
making its decision in this case the City Commission is constrained to considering relevant factors.

Now, according to regulations promulgated by the State Historic Preservation Officer, a relevant factor is defined as pertinent information submitted by project proponents or opponents in written form, including evidence supporting their positions. Thus, a proposed alternative use may only be considered a relevant factor if it is in writing and includes sufficient factual information that would support a conclusion that such proposed alternative is not only feasible but prudent. For example, a proposed alternative use is a relevant factor if in writing it addresses certain technical, design, and economic issues related to the proposed project, as well as the project's relationship to a community-wide plan.

Other relevant factors may include, as it may be relevant to this case, the character of the neighborhood, the zoning and uses of nearby properties, the suitability of the property for the proposed use, the extent to which the
proposed use would detrimentally affect the
nearby property, the length of time the
property has remained vacant, the relevant gain
to the public health, safety and welfare when
balanced against the hardship to the owner if
the applicant is denied, the recommendations of
professional staff, and compliance with the
comprehensive plan. Those are known as the
Golden factors and are applied in a wide
variety of land use decisions. Now, the Golden
factors are by no means the only factors that
are relevant. There may be other factors that
are relevant to this specific case that are not
listed that the City Commission may consider.

Now, however, suggested alternative uses
that lack sufficient factual support are not
considered relevant factors and may be ignored
or must be ignored by the City Commission.
Moreover, the aggregation of one or more of
such suggestions absent any evidence to support
them does not convert those statements or
suggestions into a relevant factor. If a
suggested alternative is not a relevant factor,
then the City Commission may not consider it,
and, significantly, the proponent is not
required to refute it.
Now, in this case, because the applicant or the proponent has the burden on this appeal to refute any relevant factor that may be presented as an alternative use, for that reason I think there is scheduled a little rebuttal time at the close of the public meeting for the applicant or proponent to present a rebuttal.

Now having outlined the scope of review relating to relevant factors, I turn now to the substance of the City Commission's decision. As noted earlier, the City Commission must, based on consideration of all those relevant factors, decide two things: First, whether there is no feasible and prudent alternative to the proposal; and two, whether the proposed program includes all possible planning to minimize harm to such historic property resulting from said use, and I will address each of those separately.

According to the regulations, "no feasible and prudent alternative" means that there is no alternative solution to the proposed project that can be reasonably accomplished that is either sensible or realistic. The word "feasible" is defined as capable of being accomplished or being brought about, as
possible, suitable or reasonable. The word "prudent" means wise in handling practical matters, exercising good judgment or common sense.

When considering whether there is no feasible and prudent alternative the City Commission must under the regulations consider these four factors: Technical issues relating to the project, design issues relating to the project, the proposed project's relationship to the community-wide plan, if there is one, and economic issues related to the proposal.

The determination that the City Commission makes must be made on a case-by-case basis. That means that the City Commission must look at the particular facts of this case and apply the standards to it to make its decision.

Typically, as in this case, when a proposed project does not involve the destruction of historic property, then the courts do not construe the no feasible and prudent alternative as tightly as they do in cases that would involve the demolition of a historic property. What the courts require in these cases is that the City Commission take a good hard look at all relevant factors and,
using plain common sense, base its
determination on the evidence presented before
it.

Now turning to the second conclusion or
the second part of what we must find, the City
Commission must determine that the program
includes all possible planning to minimize
harm. This regulation requires the materials
presented to the Historic Resources Commission
clearly identify alternative solutions and
their effects and describe the mitigation
measures proposed by the project proponent that
address the adverse affect determination of the
Historic Resources Commission. By "program"
the legislature means the project.

In making this determination the City
Commission must consider factors such as
lighting, traffic, vandalism, noise, drainage,
fire concerns, height, trash, among others, and
determine whether the proposed project has been
designed or planned to protect the historic
property from those sorts of harm.

In conclusion, to comply with the Kansas
State Historical Preservation Act the City
Commission must examine all relevant factors
and from those factors determine whether, one,
there is no feasible and prudent alternative to
the proposal, and two, whether the proposal includes all possible planning to minimize harm to protected properties. In drawing its conclusion the City Commission shall consider any relevant evidence logically connected to its ultimate determination. That determination must be made based on the particular facts of the case and will depend in large part on the nature of the proposed project and the affect it will have on the historic properties and their environs.

With that, I close. Toni Wheeler, the city attorney, and I will be on hand in case you have any questions. Also, at the conclusion of the hearing we would ask that you request staff to prepare findings of fact and conclusions of law. While they are not required or mandated in cases such as this, the courts strongly urge City Commissions when hearing cases like this to prepare findings of fact because it assists them in case there are additional proceedings.

MAYOR SCHUMM: Any questions?

COMMISSIONER DEVER: Question. Can you clarify, for me at least, the language defined as feasible and prudent alternative to the
proposed project? Specifically what I would like to know is, when it states "the proposed project" in parenthesis in my mind the proposed project is that which we are looking at today, would an alternative to the proposed project be one that is similar in use and scope or could it be any potential other use or land use that might occur at the property?

MR. LARKIN: If -- it could be any use. If it is a relevant factor, then it can be considered. If someone presents something that would be possible or could be done on that property, within the same footprint or different footprint, or some other project that could possibly work, as long as there is sufficient evidence to establish that it is feasible and prudent, then that is the standard.

COMMISSIONER DEVER: So any land use, including nothing going there, is a feasible and prudent alternative?

MR. LARKIN: Well, I don't -- leaving it vacant is probably not. For example, I know case law states that you can't require someone to sell the property so I think leaving it vacant, I don't know that leaving it vacant would be a prudent and feasible alternative.
COMMISSIONER DEVER: Okay. Thanks.


Why don't I give the public the outline of how we are going to conduct this hearing tonight. First of all, we did hear from our legal staff and the next item then would be a staff overview from the HRC determination by Lynne Zollner. Then the next item will be the staff overview of an incentive request and Diane Stoddard will take care of that. The next speaker will be Springsted, Incorporated, summary of financial reports. We'll follow that by the applicant presentation, William Fleming, Dan Watkins, and others. Following that will be a presentation by Ronald Schneider, who is the attorney for the neighborhood association, or the neighborhood, I should say. Following that will be public comment and after public comment will be rebuttal by the applicant. I have also indicated to the counsel for the neighborhood that he should have opportunity to rebut anything that he wants to rebut as well.

The staff will proceed with their development of their information. There is no
time limit on it. I have talked to Attorney Schneider today and I asked him how long he would like to make his presentation and he thought 20 minutes, I said that's fine. All other comments, though, from the public will be held to five minutes so I hope that is agreeable to everybody. I have tried to work it out so that everyone gets heard and all the information gets presented.

So with that in mind, that is the framework, I don't know how long this is going to go. It is likely that we will take a break somewhere in between here so that we can all remain mentally alert.

All right, please proceed with the review of the HRC.

MS. BRADDOCK-ZOLLNER: Thank you, mayor, commissioners. Lynne Braddock-Zollner, the historic resources administrator for the City of Lawrence, here this evening with the appeal of the Historic Resources Commission determinations for the new proposed project at 900 New Hampshire Street.

This is the project location. The orange shaded area is the proposed project location. This would be Ninth Street and this is New Hampshire Street.
Some photographs documenting the site.

This is looking to the east at the project site. Looking at the project site looking towards the south. Looking back to the west at the project site. And then looking to the north on the project site.

The project is, the applicant is requesting construct a new five-story multi-use structure at 900 New Hampshire Street. The mixed use building includes two levels of underground parking, Town Place Marriott extended stay hotel, a restaurant and a ground floor retail space. The structure will be approximately 121,908 square feet, with the hotel occupying the majority of the structure, including a portion of the first floor, the second, third and fourth floors, with the restaurant on the fifth floor.

The proposed structure will be concrete and steel framed with materials that include stone, brick and metal panels. The height of the structure at the corner of Ninth and New Hampshire Streets will be 63 feet. The proposed structure incorporates varying numbers of stories to address transitioning from New Hampshire Street to the commercial district to
the North Rhode Island Street Residential Historic District. The height at the alley is 40 feet and the height at the Arts Center is 44 feet. The overhead doors are located on the north elevation to allow for access to the loading dock and underground parking. Storefront systems are located on the north and west elevations and the ground floor finistration also includes the entrance to the building and the hotel lobby.

These are some elevations and schematics designed by the architect that we are using this evening. This is the New Hampshire Street elevation.

This is the Ninth Street elevation.

This is the alley or the east elevation of the structure with a rendering showing it at the bottom that's the same.

And this is the elevation that will be adjacent to the Arts Center.

The property is located in the environs of several properties listed in the National Register and the Lawrence register and the register of Historic Kansas Places. The property is located in the environs of Lawrence's Downtown Historic District and the North Rhode Island Street Residential Historic
District and both those districts are listed in the National Register of Historic Places. The property is located in the environs of the Shaler Eldridge House, which is listed in the Register of Historic Kansas Places. The property is located in the environs of the Social Service League building, which is listed in the Lawrence Register of Historic Places. And the property is located in the Downtown Conservation Overlay District.

This shows that graphically. Again, your project area is the shaded area in gold. This is the Downtown Historic District, this is the North Rhode Island Street Historic District, this is the Social Service League building, and down at the bottom of the screen is the Shaler Eldridge House.

The Historic Resources Commission considered this project in three reviews. The first review they did was the Certificate of Appropriateness review and that is in Chapter 22 of the Code of the City of Lawrence and that is our Historic Resources Code. They looked at the project using the Downtown Conservation Overlay District review or the Downtown Design Guidelines review, and then they reviewed the
project under the state preservation law.

Under the Certificate of Appropriateness review or the Chapter 22 review the project is being reviewed under this standard because it is in the environs of the Social Service League, which is listed in the Lawrence Register of Historic Places. It is important to note that when projects are listed in the Lawrence Register of Historic Places the Historic Resources Commission, as well as the City Commission, adopts an environs definition and that was included in some of your staff information and I can answer questions about that if you like but the conclusion of that was that this area of the environs had changed dramatically and would be commercial development in the future, that was the anticipation.

There is a presumption with the Certificate of Appropriateness review and the environs that the certificate will be approved unless you can show that the proposed construction or demolition would significantly encroach upon, damage or destroy the landmark or the historic district and the Historic Resources Commission felt like the applicant with their proposal to monitor the Social
Service League building to make sure that there was no physical damage to the structure met the test and they approved the Certificate of Appropriateness five to one at their meeting on April 30th.

They did review the project under the Downtown Design Guidelines. Now, the Downtown Design Guidelines were first adopted in 2001 and a revision was approved by this Commission in 2009. They are a development tool to ensure compatibility with development in the Downtown Conservation Overlay District. It is not the intent of the Downtown Design Guidelines to restrict development in such a way that it is a step by step you have to meet each and every design guideline, the intent is to meet the overall intent of the guidelines, so that you may not meet one or more of the guidelines but you are meeting the overall concept of the guidelines. The Historic Resources Commission reviewed this project under the Downtown Design Guidelines and made a determination that it did meet the intent of the Downtown Design Guidelines and approved that review four to two at their April 30th meeting.

The state preservation law was the third
review that the Historic Resources Commission did on April 30th and they determined that the proposed project would damage or destroy a listed property. Specifically they found that, using the standards and guidelines for evaluating the effect of projects on the environs, that the project did not meet standard No. 6. There again, they were focusing on the size, scale and proportion and massing of the environs and that this proposed project did not meet that for the North Rhode Island Street Residential Historic District.

They did note, if you looked at the minutes from that meeting, they did talk about how this does fit with the, it is compatible with the Downtown Historic District but because this is a residential district the scale and massing and special relationships in a residential district are different from a downtown district and they did not feel that it met the test for that residential historic district.

The applicant is appealing, as Randy mentioned, that decision per KSA 75-2724 and the agreement with the State Historic Preservation Officer and the City of Lawrence. The City Commission is not being asked to make
a determination whether or not this project damages or encroaches upon the listed property.
That decision has been determined by the Historic Resources Commission and that stands.

The City Commission is asked to hold a public hearing to determine if there is a feasible and prudent alternative to the proposed project and if no feasible and prudent alternative is available, that the City Commission shall determine if all possible planning to minimize harm to the listed property has been undertaken.

And I will leave you with that and answer any questions that you might have.

COMMISSIONER DEVER: I have a question, Lynne. Can you tell me if any of the infill developments that have occurred along New Hampshire have met the standards of the HRC, specifically the Lawrence Arts Center, Hobbs Taylor Lofts or Borders bookstore? Have any three of those, did any of those meet the requirements and did it have to become, did it become, come before this board?

MS. BRADDOCK-ZOLLNER: I would do some more research to answer that specifically but I can tell you that the Downtown Historic
District was listed after those projects came online, as well as the North Rhode Island Street Residential Historic District, so I would have to look specifically. Someone who was here longer than me might be able to answer that question. I do believe that Borders was an appeal to the City Commission but I would have to research that and get those answers back to you.

COMMISSIONER DEVER: Okay. Dave, do you know the answer?

MR. CORLISS: I'm sorry, Commissioner Dever?

COMMISSIONER DEVER: Do you know the answer to that question?

MR. CORLISS: No, I don't.

COMMISSIONER DEVER: Okay. Thank you.

MAYOR SCHUMM: Anybody else? Mike.

COMMISSIONER AMYX: So, Lynne, the Certificate of Appropriateness only deals with the proposed project and the effect that it had on the Social Service League building, is that correct?

MS. BRADDOCK-ZOLLNER: That's correct.

COMMISSIONER AMYX: And not the district as a whole?

MS. BRADDOCK-ZOLLNER: And not the
COMMISSIONER AMYX: Okay.

MAYOR SCHUMM: Further questions? Thank you.

MS. STODDARD: Good evening, mayor and commissioners. Again, I am Diane Stoddard, assistant city manager. I have been asked to provide a brief overview for you of the applicant's incentive request as it may be a relevant factor in your discussions this evening.

I have placed a map here on the screen that was also provided in your agenda materials for this evening. The developer is requesting that the City establish a tax increment financing redevelopment district in the area that is outlined here. The different colors denote a north project area and a south project area. Essentially they are proposed mixed use developments on the northeast corner and the southeast corner of the Ninth and New Hampshire intersection.

The overall proposed private investment is approximately $45 million with the project. The developer has requested three basic incentives to be applied in the project. One district as a whole.
is tax increment financing, the second is transportation development district financing, and the third is industrial revenue bond financing, and I will walk through each of those requests for you.

First, a tax increment financing, or TIF, again, this would be the district that is outlined on the map.

And Chuck, if I could ask you if you could pull the document camera up.

As I am going through this request it may be helpful for you to see the overview of the incentives on a large list here that captures overall the projected revenues and the projected expenses related to both the TIF and the TDD districts.

The TIF district would capture the incremental new revenues generated by the development for a period of 20 years and these revenues would then reimburse the developer for TIF eligible costs, such as parking garages, site improvements, interest costs and possible land acquisition associated with the Lawrence Arts Commons project, which I will talk a little bit about here in a moment.
The base amount of taxes would continue to flow to the taxing jurisdictions throughout this entire period. As, there is materials, again, in your agenda item that proposes a Lawrence Arts Commons project, which has been proposed by the Lawrence Arts Center and would involve possible acquisition by the City of the Salvation Army parcel that is located south of the Lawrence Arts Center. Under the proposal the Lawrence Arts Center would utilize the property to further the mission of the Arts Center. 900,000 is included in the overall project budget allocated toward this possible project. Staff and the developer are suggesting that five percent of the annual TIF revenue, which would generate approximately 27,000 per year or a total of approximately 530,000 over the 20-year period, be dedicated for this project and then should additional revenues come in beyond those projected after the development, developer has been reimbursed their costs the City could continue to be reimbursed for these project costs up to a total of 900,000.

I think it should be continued to be emphasized, as we did in the packet and the
materials to you, that the discussions are
taking place with the Salvation Army but it has
certainly not been finalized in any way
regarding the acquisition of that property at
this point.

Another note regarding the tax increment
financing district is that it is proposed to
capture both sales taxes from the city and the
county share and also the property tax
increment, for a total projected increment of
approximately 10.6 million over the 20-year
period.

Next the Transportation Development
District or TDD district. This is a tool that
allows an additional sales tax to be placed
within the district that then can fund certain
Transportation Development District eligible
costs. It is proposed that a one percent
additional sales tax be added within the
district and this amount is projected to
generate approximately 1.18 million over the
maximum 22-year period. Of the total amount
collected the first 850,000 is proposed to be
dedicated to the City toward repayment of the
bonds issued by the City on the existing
parking garage in the 900 block of New
Hampshire, and there is a memo in your packet
that outlines staff's rationale for this amount as seen as appropriate contribution for the 900 New Hampshire parcel toward that existing garage since that 900 New Hampshire parcel would be, have to be removed from the existing TIF district in order to be placed into the new district.

Next is the industrial revenue bonds. These bonds are a conduit financing mechanism that a city and developer can utilize, with the developer being responsible for all of the principal and interest payments on the bonds. There is no obligation to the city in any way to repay these bonds. The benefit to the developer in using this tool is that materials that are used in the construction would be exempt from sales tax.

It should be emphasized that with regard to all of the project the developer is proposing a pay-as-you-go project. In other words, the developer would front all of the private development costs and the costs related to the improvements that they hope to be reimbursed through the TIF and the TDD and there would be no bonds or anything issued or any other obligations from the City with regard
to the project. The exception to this would be the Lawrence Arts Commons project. If that were to be undertaken by the City that would likely involve some amount of City debt financing.

One thing I want to emphasize to you as well is that this evening you are not making any commitments on the incentive request. As I had discussed previously with you at another meeting, there is a number of steps involved in creating all of these districts and ultimately granting the request, if you choose to do that. There is a calendar that is in your packet that outlines that process.

I wanted to also note that Gary Anderson, the City's bond counsel, is here from Gilmore and Bell this evening and he could answer any particular process questions that you may have about this or any of the legal questions related to these financing mechanisms.

This evening we are proposing that the City Commission should consider action on first reading of an ordinance removing the parcels on the east side of 900 block of New Hampshire from the existing district, and that would just be, again, an initial action, and also set a date for the Public Incentive Review Committee
to consider this request and provide a recommendation. The suggested date for the PERC meeting we are suggesting would be July the 10th at 3:00 p.m., should that request be advanced to PERC. I want to point out that your calendar does indicate a July 17th possible date for that meeting but we have learned that the developer does have a conflict with that date.

Next I would like to introduce Springsted, Incorporated. David MacGillivray and Tony Schertler are here from that firm. The City has engaged this firm to complete the financial analysis that is involved with this proposed project. The cost for their work is funded through a funding agreement with the developer. They have completed a total of four reports that are also provided in your agenda materials. That would be a three-story feasibility analysis, a four-story feasibility analysis on the 900 New Hampshire site, a north project need for assistance analysis, and an overall TIF feasibility report.

And with that I will turn it over to David and Tony. I believe David is going to provide you an overview of the firm and I think Tony is...
going to walk through the reports for you.

MAYOR SCHUMM: Diane, I have a question first, please.

MS. STODDARD: Yes.

MAYOR SCHUMM: On the sales tax portion of the revenues that are going to go into the TIF does that also include the hotel-motel bed tax?

MS. STODDARD: I'm sorry, mayor, it does not include the bed tax. The bed tax, I should point out, is, it would be an additional amount that is proposed to flow directly to the City and that amount is estimated at around 75,000 per year.

MAYOR SCHUMM: There's no claim on that to the TIF?

MS. STODDARD: Correct. There has been no request related to that guest tax fund.

MAYOR SCHUMM: Other questions? Thank you.

MR. MacGILLIVRAY: Good evening. My name is Dave MacGillivray. I am chairman of Springsted, Incorporated, and with me is Tony Schertler, senior vice president, who also heads our housing and economic development group.

Our presentation is going to cover predominantly five areas, first a short
overview of who we are, and then secondly, as Diane said, we have been engaged by the City to look at four different financial areas, all financial feasibility studies relating to this project.

I will start at the bottom of the list and that is the redevelopment project statutory financial feasibility study and that goes to the tax increment financing request in that the state statute requires the council if they want to proceed with that to show that project benefits exceed project cost.

City of Lawrence goes well beyond that statutory piece and looks at a needs analysis, meaning do they need the money and coincident with that are they making an unfair rate of return, so you will see in the south project area a four-story needed assistance analysis and the north project, that responds to that piece, and as currently proposed it is a four-story project and so we did that needs analysis.

Following that and then given the discussion whether it should be shorter the City approached us about doing, what happens if the project was a three-story project, what
would happen to the financial feasibility of that, so that was overture on the part of the City to look at a shorter project and see what the financial feasibility would be.

Little bit on Springsted. Sixty-year firm headquartered in St. Paul. We operate in ten states. We have five practice areas. How is it germane to this evening? Housing and economic development and public finance, we three others that relate to local government.

We are an independent adviser. All of our clients are public sector. We have never worked for a developer. We aren't underwriters. We solely work for public sector and nonprofit groups. We took that position 60 years ago so you could ensure objective advice for the City in your decision-making.

Kansas experience is extensive. In the economic development area we were involved with the first tax increment financing project in Manhattan in 1985, the mall, and not every but I would consider most of the major economic development projects in Kansas. I'll get to that a little bit later.

The services within economic development, we do developer review, you know: Do they have the capacity and the wherewithal to deliver
this project? Do risk assessment and what we call the but-for test: Do they need the money with the assistance or can they do the project without it?

We bring a national perspective. We do projects in, coast to coast actually.

And lastly, in Kansas some of the noteworthy things, basically NASCAR and all of Village West from the beginning I've been involved with, Wichita downtown, Manhattan downtown, we just completed a new project there with a new museum and conference center.

And then a little bit about us. I am the chairman of the firm. We have about 60 some employees across our offices. I have been working in Kansas since the mid 1980s. Most of our economic development work in Kansas I have done. Lawrence, a number of projects over the last 15 years, Oread, I see some familiar faces from that. I do remember we worked on the parking ramp that's across the street from this proposed development back when that was proposed and basically I think our work in public finance and economic development goes back about 15 years for the City.

Tony heads our economic development and
housing group. Prior to joining Springsted about five years ago he was the lead person of a major city's economic development department, both core downtown as well as neighborhood projects, established central cities, had many of the issues that you're talking about relative to neighborhood sensitivity. He's been active in the last few years in Kansas. When the casino project was first proposed, the due diligence and all the potential operators, Tony led that effort for the unified government, we're sort of on an ongoing basis with KCMO doing TIF and but-for, needs analysis for their various projects.

So that's our background. I'd be glad to go into more. Oh, there's one more on me I want to talk about and that is I am the adviser to the National Government Finance Officers Committee on Economic Development where they develop best practices for local governments and I co-teach a national GFOA class on economic development that goes into many of the issues you're talking about.

We have this broken into four segments. We are going to start with the height situation and talk about the four-story, I'm sorry, three-story, then four-story, then the north
project, and lastly the statutory finding on the TIF.

Height feasibility analysis. Here again, we were retained by the City after the proposal of the four-story to look at an alternative option on a three-story project. I thought, we put this slide, what does feasibility mean? We had your attorney talking about feasibility relative to the historic situation. Ours is financial feasibility, which is different. It is really would a rational investor commit their money to this project? And what does that depend on? It depends on risk, how long, and what else you have to invest your money in. I think another test is would a bank lend them money for this project at market terms, so you could walk in with anything but is it financeable and through a rigorous sort of lending process what would be the answer to that?

How is it measured? And what we use and I think the industry uses is called internal rate of return and that is if I put my money in now and I get this much over time and then I sell it what's the interest rate of bringing that, what's the value today and sort of it's that
stream of income and ultimate sale, what does that mean in terms of rate of return? So you could buy a thousand dollar government U.S. Treasury Bond you get these days, you know, 1.5 percent, dollar fifty be -- let's use a hundred dollars, it's easier, 1.50 per year and at the end you get your hundred dollars back so the internal rate of return is 1.5 in that case.

And then so we're going to talk about the internal rates of return based on developer's representation, our testing of those, and then we are going to compare those to three things. Predominantly Price Waterhouse Coopers quarterly publishes for all types of economic development projects what is the range and average rate of return so if people are investing in this what are, what is that market and what is that rate of return?

Then in testing some of the assumptions on cost we've looked at other national standards of cost per square foot, et cetera, and the ability to rent hotel rooms or apartment rooms, and then our own experience, because we're doing this every day in a lot of different places.

Three-story height analysis methodology.
Developer had prepared a ten-year cash flow.

Cash flow is here is our cost, here is our revenues coming in, here is the cost of obtaining those revenues, here is the difference or profit, and at the end we sell the facility or there is an alleged sale, alleged means because they get their money back at some time you have to consider that, so we looked at these.

Next we looked at the cost and operating assumptions. I think I really want to underscore the word tested. I mean, we didn't just accept these, we tested these. We prepared the financial assistance analysis on taxing increment financing, TDD, and then we did the internal rate of return calculation.

Just briefly, and I think this has already been alluded to, the three-story scenario, excuse me, it's commercial and apartment uses. I think we want to make one point here. The three-story building has 52,476 square feet, you have some retail on the first floor, then apartments, but I think the third bullet down, which is total leasable area, is 43,393. That means that any building you're going to have, you know, corridors, you're going to have
stairways, you're going to have elevators, you're going to have common spaces that are not, they don't generate income, they generate cost but they don't generate income, so the total leasable area is reduced by 17 percent to 43,000, then with the underground parking.

They provided a build-out of this project on a cost basis, it is a $12 million project. They based their estimates on $133 per foot, which is comparable to what their experience is on the development across the street. That RS Means is a national source that says here is what, for this sort of development this is a range of cost per square foot, $129 to $180, so the 133 is at the low end of that range. So it is in the range so it is acceptable market but it is, you know, not a fancy building, it is a lower per-square-foot building.

The assistance scenario, we talked about, so we have a, what was really submitted was the four-story project, then at the interest of the City we said, well, let's look at it if it was a three-story. Well, the three-story, because the developer wasn't requesting it they weren't necessarily requesting any assistance for it so we assumed that the assistance level, the TIF, the TDD, that they would receive on the
four-story would be transferred over to the three-story so even though they're, you know, it's not necessarily, you know, relates specifically to a three-story it does provide a basis of comparison with the four-story option because if you went with a three-story without any assistance the rate of return would plummet as compared to the four-story so we put that in there and actually it's, so there is a assumption of assistance at a three-story level.

Internal rate of return, Price Waterhouse Coopers for the first quarter of 2012 their survey for apartment projects ranged from an internal rate of return of 5.25 to 14 percent, with a average desired return of 8.28 percent, so when we talked about is it feasible, would you put your money into this if you were in the apartment business, well, you should get a rate of return somewhere in that window and on average about 8.28 percent.

So doing our analysis, we showed that the three-story project without any public assistance would be 0.2 percent, less than one percent, and if you provided the level of assistance that they were getting on the
four-story the level of assistance would be 3.83, level of return would be 3.83 percent. These are all under the Price Waterhouse and our experience relative to acceptable internal rate of return.

So it is, you know, significantly under and without assistance it is basically a zero. So we said what would it take -- I mean, these are estimates. This is trying to look at the future. What would it take to get to those levels that are an average with the Price Waterhouse? A, it would require either a 30 percent decrease in the project cost or a 40 percent increase in the revenues or a combination of both, 16 percent and 16 percent. Now, you know, we can't comment on, you know, it's possible that costs could go down 30 percent or that revenues could go up 40 but, you know, it's an order of magnitude that is, you know, outside of what I would call a bell curve so you have to look at the probabilities and reasonable people may assign different probabilities to those so your rate of return could go up if costs go down or revenues go up or there's some combination.

So our conclusion is that the 3.83 percent is well below desired market rate of return as
national listing of apartment users across the country so you could conclude that potential three-story project, given the current projections, is not financially feasible based on the comparison to market returns.

And I think we will just keep rolling through ours and -- because you have a lot, before we take any questions. I would say throughout this we have tried to strike a balance between there's a whole bunch of stuff in those reports and a little, you know, some numbers but looking for the conclusions.

MR. SCHERTLER: Tony Schertler with Springsted. Thank you, commissioners and mayor.

I am going to move quickly through the next analysis because I think it has to do more with your entitlement decision or your incentive decision later on and I believe that staff wanted to be sure that you had all the information that was available that had been compiled to date so even though it may not be directly on point to the alternative, feasible alternative analysis, it is there to illustrate what happens with the project as proposed and
The other principle I would like to emphasize is that what we are attempting to do here is be transparent and frame the issues so as facts change when you are putting together assumptions and you have estimates and then you're going to eventually have bids and you'll have more solid data as you move forward all those facts can be configured in here to update your projections and that is why we do the sensitivity. Primarily we are trying to determine whether, and this is a negotiation so people are going to ask more for, than they need occasionally, that's our experience, so we do the sensitivity analysis so that we can test the developer's request to make sure that he's not asking for too much or where we think he is overstating a cost we'll push that down, we'll question that and push it down because obviously if he's overstating a cost he's understating his return and so we are, we bring these pieces together so that it's, the community can take a look at and change things, change assumptions.

The next three reports that I will go
through quickly, because they are really more material to your decision on entitlements and incentives, are Lawrence's request that when somebody seeks financial assistance that there be a needs analysis, some people call it a but-for analysis, but it is really an understanding of what is driving the request to make a range of a reasonable investment, and it is a range. People make investments for a variety of different reasons so we are showing a bandwidth here, if you will, and it's when they drop down below we understand that they need it.

We also use these, for example, to determine whether they're asking for too much so if a developer is getting 25 percent return, thank you very much, it looks like a great project, hope you get rich but you really don't need any community assets to get you there, and so this is also used as a regulator, not only to determine whether something needs help but to stop it, block it down at the top and come back and say, you know, we think you guys don't need this, or somewhere in between, where you're going to look for some public purpose costs that you're trying to accomplish.
I'm going to move through this quickly.

We have a lot of data. I do -- well, we'll see, and I'm available for questions as we go through it.

Again, the methodology David has already talked about. We're using some published data on those ranges of returns, we're using published data on costs. We also have direct experience here. Those costs happen to fall within those ranges.

The need for assistance analysis to determine if the proposed projects would not reasonably be anticipated to develop without the adoption of the requested financial assistance and I just touched on that. If the returns are below six percent an arm's length investor isn't going to make that investment so what is it going to take to go out there.

Again, as Dave touched on, these are project facts. We don't have to go over these. I will point out that, as all these projects do, there's always tweaking, there's always adjusting until you are ready to close on your deal. I would just point out that what we analyzed a couple weeks ago was 81-unit extended stay hotel with some apartment, eight units apartments. The developer has recently
adjusted that to a 90-unit and that makes
sense. If you look at the returns that we were
projecting earlier, he's trying to get those up
as well, he's trying to figure out a way to
make this investment work for his team and his
lender.

Again, these are costs, we don't have to
go -- they're all in your package. The
evidence is there. We've got these broken
down, and again, we're always looking over here
on the right column: Are those reasonable
assumptions? Are those developer fees
reasonable? You know, is there a place where
they're maybe shifting costs to again
understate return and overstate costs?

The developer has proposed a 75/25 split
between debt and equity for funding of the
project, permanent financing of 12 million,
permanent equity of 25 percent. Again, our
expertise, we do a lot of public debt but we're
also doing a lot of economic development deals
and this falls within the range that Springsted

has encountered when we're negotiating with
developers on permanent financing for real
estate development deals so nothing here
jumping out of, you know, they're not getting
interest rates that are outside the norm.

Developer is requesting assistance in the form of TIF and TDD. Again, Diane already touched on this. This is really sort of going back through the interest costs, the parking garage, the site improvements. Those details, again, are in your package, and again, I am conscious of being relevant and material to the alternatives analysis.

Projected potential rate of return realized by the developer from the operation of the proposed development scenario for comparison to market --

THE REPORTER: You have to slow down a little bit.

MR. SCHERTLER: Oh, I'm sorry, I apologize.

Again, in this scenario, the last scenario was an apartment building so the range of investment returns are a little different than they are for a hotel development and the Price Waterhouse survey says the range of the quarterly report updated on what is going on says that reasonable range is between 10 and 15 percent or the, where people are investing right now, with an average of 11.65, so the four-story alternative, four-story with
restaurant is a hotel project so that IRR
shifts a little bit, it's a different type of
product.

The projected internal rate of return for
900 New Hampshire based on the assumptions
outlined were without assistance the project at
the way the developer proposed it has a
2.6 percent, with assistance it's 5.73 percent,
so you can see that this is a skinny project.
This is below recent returns, which is why
you're seeing some adjustment possibly, and
I'll let the developer speak to that.

And so our conclusion, obviously, is that
this project is not likely to occur without
financial assistance.

So we, again, just as we did with the
previous one, well, what changes? What's
driving the gap? Is there anything that can
increase value or reduce costs? So we do this,
again, to try and smoke out sensitivity.

Without assistance if you, how do we get to
that benchmark of 5.73? We have a 20 percent
decrease in project costs, that's what it would
take, a 25 increase in lease rates, a combined
savings, again, we're trying to smoke out what
can affect those rates of return.
The north project, the second project not related to this site, because you are creating a tax increment district, again, we are doing the needs analysis, similar thing, I'll move through this quickly, the methodology is similar, where I've identified what the project is, seven-story, 114 apartment units.

Here is our cost calendar. Again, we're looking at those percents of totals on the right. Again, this is our building cost estimates of $133 per square foot, the RS Means manual is 141 to 196 so if anything the developer is understating costs. Those costs could be higher and affect his return negatively. We're usually looking for the other way, by the way, we're looking for overstating of costs. And he's got the current estimates and then the parking garage costs are 21,000.

Again, the financing is similar. His lending terms are similar, five percent, 25-year term, 5.5 percent, that's reasonable. And then again, these are the site costs that Diane touched on earlier, those eligible costs. The Price Waterhouse report market rate, internal rates of return for the national apartments segment, the north segment is an
apartment building so it's not a hotel so it's
got those lower range of returns. The hotel
has the 10 to 15, this is lower, is five, five
and a quarter to 14 so that is a pretty big
range, with an average desired return of
8.28 percent.

So the projected internal rate of return
on the north quadrant without assistance is
4.37 percent and 6.21 with assistance. The
returns for the north project fell below market
expectations, the Price Waterhouse, both with
and without assistance. Without assistance the
project is unlikely occur.

So we looked again, sensitized, what if we
increased project costs or decreased project
costs, increased lease rates, same thing that
we did before, and again, this is all in the
package of information that you have.

Now we have combined these because there
was some concern that because the project on
the south side is so skinny so maybe we need to
look at combining these two efforts because it
is, after all, the same developer and so is
there some way that we're missing, another way,
a backdoor way that somebody is being unjustly
enriched, so we combined the two events, even
though they're scheduled a little differently and there are some assumptions that you have to use on the north quadrant. When we combined the return without assistance it's 3.72, combined return with assistance is 6.3, so just another way to make sure that we're not missing anything in our assumptions.

And then this is the TIF feasibility, this is the statutory requirement of ensuring that you have enough increment to satisfy your costs.

And Diane, I can go through this but I'm conscious of time.

MAYOR SCHUMM: Briefly, please.

MR. SCHERTLER: Okay. TIF financial feasibility show that the project benefits tax increment revenues. Available revenues are expected to exceed or be sufficient to pay the project costs, I think we touched on that already. We evaluated the two sites. We have the details that Diane has already touched on on your base valuation and what your increment will be. The south project area feasibility, hundred percent of the property taxes, hundred percent of the sales tax, city and county, through establishment of the Ninth and New Hampshire redevelopment TIF district and south
project area revenues will be used to reimburse

--

THE REPORTER: Little slower, please.

MR. SCHERTLER: Oh, sorry; forgive me.

Trying to do two things at once, be clear and
move quick.

Revenues will be used to reimburse both
private and municipal expenditures, which Diane
touched on some of those costs that the City
would like to redirect those values to. The
south project area one parcel to be redeveloped
into a mixed use hotel and commercial building,
two tax exempt parcels to remain tax exempt,

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total base year assessed valuation of the
project estimated at 62,227. Project's total
fair market value upon completion in 2014 is
estimated at 6,870,042, generating a total
assessed value of 1,567,540.

The south project tax increment revenue,
the total tax increment for the south project
area of 6,210,276, total property tax increment
of 3.3 million, approximately, total sales tax
increment of 2.8, approximately, projected for
the 20-year period starting from south project
area approval. We will be submitting this
information again to you in a final form when
you make the incentive decision so I am glazing
over these numbers a little bit but, again, the
developer is requesting the City authorize the
establishment of a TDD, proposed levy of
one percent, we're looking at all these to make
sure that it satisfies statutory requirements
and the needs.

Total tax increment of 6.2 million, total
property tax increment of 3.3, total sales tax
increment of 2.8, total TD sales tax revenue of
1.1, developer financing of 17 million.

Again, Diane touched on the costs that
they're seeking reimbursement for, the interest
rate that they've sought for their private
financing to be compensated for, the total
private south area project cost of 5,421,288,
and again, some of these numbers will adjust as
details come in.

The developer will finance 5.4, request
reimbursement of TIF/TDD revenue, including
interest expenditures, the total south area
project private TIF/TDD expenditures are
5,421,288, including interest expenditures of
the south redevelopment project cost.

Developer is only reimbursed revenues
collected. Again, Diane touched on this, this
is a pay as you go so the risk is lower for the
City than if the City were fronting money and accounting for that to come back, so the developer is financing that revenue stream. There is no obligation on the part of the City to contribute any shortfalls to finance the total construction costs or interest expenditures.

And the City, as Diane has touched on, the City is seeking reimbursement for the following south project area costs: Reimbursement for the existing parking garage, the Lawrence Art Commons expense, and the total municipal south area project costs of 1.75 million, total combined south area project cost of 7.1.

And this is just a summary of the total revenues that exceed the cost for your feasibility analysis, and again, we will touch on this at an appropriate time for your findings on your statutory findings.

The north area, again now we're back on the north side because this is all part of the TIF feasibility analysis, we're touching through the developer's requests on that. This is the base values. I'm losing my thread here a little bit so I'm going to move through this.

The north project is eligible to be
receive increments through the first half of
2032 and 2033 collection assumed all years that
are a hundred percent of property taxes are
paid when due. The total property tax
increments projected over the term of the north
project are $4.4 million. Total tax increment
of 4.4, no sales tax increment projected
because it is an apartment building and there's
a commercial use but we're not projecting any
sales there at this point, and the developer
financing of 27.6.

The developer is seeking reimbursements
for the following north project area costs:
Site improvement estimates at 800,000,
underground parking garage estimated at 2.6,
interest expense reimbursement at 5.5, rates
estimated, rate estimated at 2.1, total private
north area project costs of 5.5 million.

The developer will finance 5.5 million,
request reimbursement from TIF revenue,
including interest expenditures. The total
north area project private TIF expenditures are
5.5, including interest expenditures for the
north redevelopment project costs.

Developer's only reimbursed revenues
collected during the statutory term, no
obligation on the part of the City to
contribute any shortfalls; again, similar to
the south side.

And here is the conclusion. Project
benefits, which include projected TIF revenues
and developer contributions of at least
1,120,360 are sufficient to pay the project
costs. The 4.43 of the north project TIF

revenues plus the 1.1 of developer revenues
totals 5.5 north project costs.

So that was quick and I apologize for
rapidly moving through the second phase but I
think the message we want to leave you with is
the methodology of doing the analysis of the
returns and the feasibility of the projects are
similar and we're using the same benchmarks
consistently on the development projects.

Thank you.

MAYOR SCHUMM: There any questions? Thank
you.

I'm sorry, we have one question.

COMMISSIONER CARTER: Sorry. Curious, on
the actual rate of return I didn't see, did you
determine -- what do you use as far as an
occupancy for a hotel?

MR. SCHERTLER: Mayor, commissioner, I
have detailed notes. I think we had a vacancy
rate in the hotel of?

MR. MacGILLIVRAY: Sixty some, occupancy is 60.

MR. SCHERTLER: Sixty-six, 66 percent, which, again, another industry standard that we look at in hotel industry that matches up those projected vacancies and occupancies.

COMMISSIONER CARTER: Sure. And there was no, that -- I don't know how you would actually ascertain, it's not utilizing what current occupancy rates are, are established.

And then just one other quick one is you've mentioned occasionally you find as you represent cities developers that are looking for more assistance than needed and don't meet the but-for. Just curious how often that maybe happens and if there's there is a recent example or --

MR. SCHERTLER: Mayor, commissioner, I think what typically happens is that as estimates are refined they're negotiated down so it's -- we had a project in Brooklyn Park, Minnesota, where the developer was seeking $10 million in assistance and at the end of the day the city provided 3.5 million, because of the way they financed it, because of some of the cost assumptions, scheduling, and
understanding the city's capacities and policies, so it is not unusual that the first bite at the apple comes in bigger and these things, they shift, because it is negotiated.

COMMISSIONER CARTER: Thank you.

COMMISSIONER AMYX: Tony, going back to the vacancy rate again, you used that as an industry standard. Is that a local number that was -- where did that 66 percent come from?

MR. SCHERTLER: The hotel proposal came from the developer and we verified both I think what, if we have data available for the community that it's in what your hotel vacancy rates are, they have been fluctuating. We also use HVS. There is another I missed, I didn't mention, another industry standard on what are reasonable vacancy rates to project in hotel developments, so we tested on those and it falls within those ranges.

COMMISSIONER AMYX: Okay, so it wouldn't be actual rates for Lawrence and Douglas County?

MR. SCHERTLER: Mayor, commissioner, no. And in fact, obviously any more detail you can get the actual lifetime the better, the clearer your vision is so, you know, as these things
evolve and you get actual leases and things
like that those are better data.

COMMISSIONER AMYX: Okay. Thank you.

MAYOR SCHUMM: Questions? Thank you very much.

Okay, we will have the presentation by Ron Schneider and then we'll take a break after that presentation, we'll open it up to public comments.

I'm sorry, I'm sorry, the applicant is next, beg your pardon.

MR. WATKINS: Mayor, commissioners, I am Dan Watkins. I represent the applicant, Ninth and New Hampshire, L.L.C., and I think the staff and the consultants have done an excellent job of laying out information for you that is in the record tonight. We are going to present additional information that goes to the relevant factors that you are to take a look at, and Commissioner Dever, I think it was pointed out that your job is different than the HRC's and you are, the Commission is to look at all relevant factors that, and there's four that are required that you look at. Those are technical issues, design issues, the project's relationship to the community plan, and economic issues.
Economic issues aren't really things that
are looked at by the HRC. They are things that
the City is required to look at on an appeal.

So applying a literal interpretation to
all feasible and prudent alternatives and all
possible planning, as I think some people would
like to have you do, is not what the law
requires here. Law requires you to look at the
relevant factors, take a hard look at that and
you can then weigh the evidence that is in
front of you and you can make determinations on
what is believable, what is realistic, and the
cases talk about common sense, using common
sense judgment about these factors.

Now I would like to submit in writing the
information that has gone into a lot of the
hearings that have taken place over the last
several years, or the last several months with
HRC, as well as some affidavits that have been
presented. All of this information was
provided to the City last Thursday prior to
this meeting but I would like to make sure that
it is submitted for the record tonight.

We can't read it all tonight.

MAYOR SCHUMM: Just for everyone, we said
there would be no whispering and Commissioner
Cromwell was whispering, he said, "Are we supposed to read that right now?" So --

(Laughter)

MR. WATKINS: Well, I think it, in looking at whether or not there is a feasible and prudent alternative and you look at these four factors, technical issues and design issues, economic issues and the community plan, it is not really -- this information shows you that there's complex issues that have been addressed by City staff and City advisory boards and really dug into those issues. Micah Kimball will, in his presentation tonight will talk about those design and technical issues, as well as community plan issues, and demonstrate that, you know, while it is not realistic for an opponent who may have ideas about a feasible and prudent alternative to be able to spend the money to develop all of the studies and the plans and that sort of thing to prove a reasonable and prudent alternative this information goes to show that you can't just throw something up against the wall and say that it is feasible and prudent because we use some figures that say it makes some sense,
okay. There are complex design, technical, economic issues, there's competing community goals and plans here, including development of downtown, density in downtown, and others that are contained both in the community plan, our 2020 downtown design plan, and others.

So tonight we are going to present information both in affidavit and in testimony. Micah is going to talk about multiple and complex technical and design issues. Mike Treanor's affidavit and his testimony will focus on the community plan, as well as economic issues associated with developing the property. Chuck Mackey hopefully will be here a little later, his son had an accident, he's coming. He's the hotel developer. He will talk about the feasibility of developing this project.

The Springsted reports, of course, look at the economic issues and look deeply into those, again, and when you look at these, at both the evidence that we present as to what has been done in terms of all the planning and work up to this point in analyzing any alternatives you have to weigh that evidence, and we'll have comments on that after that is presented, so I
would like to, commissioner, I would like to
turn it over to Micah Kimball to go through a
slide presentation regarding things, then Mike
Treanor, and we'd be done with our
presentation.

MAYOR SCHUMM: Thank you.

MR. FLEMING: Mayor, I have extra copies
of his presentation. Can I pass that out?

MAYOR SCHUMM: Please. Please do. Will
you state your name for the court reporter,
please.

MR. FLEMING: Bill Fleming.

MR. KIMBALL: Good evening, commissioners
and mayor. Micah Kimball with Treanor
Architects, one of the project managers on this
project. It is good to see you guys again. We
are excited to come back and bring you guys the
revised project. I think last time or a couple
times ago when we met we talked to you guys and
one of the issues, one of the concerns was to
slow down the process a little bit, go back to
the HRC, go back to the ARC, meet with the
neighbors again, and we've done that, so we are
coming back with a new project, we have revised

it, we have made significant changes over the
last nine months or so and feel like we have
made it a much better project. That process
did work, slowing it down, going back and
meeting with everybody did work and going to
show you a great project here.

What we are going to show tonight is a
quick recap of the designs, the design
iterations, not every little instance but kind
of the major changes and then the major
presentations that we had made, and also this
presentation is almost identical to what we
showed to the HRC on April 30th. We've made a
couple of comments but the images are the same.
The ordering may be slightly different but it
really is the identical, very, very similar
presentation to what we showed to the HRC.

Our calendar of events, in all of the
meetings that we've had, the public meetings,
this is a quick list of the process that we
have been through, starting with September 6th
when we went to the East Lawrence Neighborhood
Association, we presented the project to them
and then we came to the Historic Resources
Commission and presented the project and then

have gone through a series of meetings, you
know, back and forth, some public, some
private, and we are back tonight for the
appeal.
Through that process there were three review processes by the HRC, which Lynne had outlined for you. We've gotten approval on two of those. We're looking for the third appeal on the state law review.

A quick project recap. This is where we started in September of last year, actually we had, this is where we went public with it, this is the first time we went to the neighbors and started presenting this and looking for input. We had a hotel and an apartment project, mixed use with retail on the ground floor. You will notice that on this project, that the hotel is on the top floor, the apartments are in the center, and retail is on the ground floor.

Again, we had a really, we had a much higher building when we first came out of the chute with this. The corner, the hard corner, Ninth and New Hampshire, was 79 feet, along the Arts Center we had a full six-story component all the way to the Arts Center with a pool at the end that you see that was 71 feet next to the Arts Center, and along the back alley we were at 64 feet, so this is our first blush at this.

We came back in December with a revised proposal to the HRC. Through many discussions
we had reduced the overall parapet height,
reducing the scale of the building, and along
the alley, in order to create a transition from
our downtown district to our residential
district we reduced the building and the number
of units that were in the program or listed in
the building, along the alley reduced that by
one floor. Again, this was a design issue.
This was transitional.

One of the biggest issues that we've
battled on this and was hit on earlier is that
we are in the convergence of several environs.
We're only in one district, one actual
district, the overlay district or the Downtown
Conservation Overlay District but we are in the
environs of four different either districts or
structures. All of these carry separate
reviews to them. Getting the project to be
designed to marry up and to meet any one of

those reviews without conflicting to another
one, such as a residential neighborhood to a
downtown district, is a very difficult process,
if not impossible. It has so many inherent
design issues to it but we have worked to
overcome this and created a transitional
design. On one side we're honoring downtown,
on the other side we're respecting the neighborhood, and we are caught in the crossfire of the two.

So in January, after our December meeting, December presentation to the HRC we started working with the ARC, we went through a series of meetings with the Architectural Review Committee of the HRC and we looked at the building and we took a step back and we redesigned the building and we looked at where the height was on the corner towards the Arts Center and that we needed to lower that side. We put the height out on the hard corner, this is per recommendations of Downtown Design Guidelines, internal review.

We also flipped the uses of the building, we brought the apartments up to the top floors and the hotel down to the lower floors, or the second and third floor, maintaining a retail and, retail uses on the street level. Again, retail uses is per Downtown Design Guidelines; we can't put residential uses down there on the street level.

But we reduced our level, or our number of apartments and in order to economically offset this and still make the project work and still meet a program that was feasible for the
project we added a restaurant to the top floor and took the pool that was up on the top floor that was an indoor pool and made it into an outdoor pool.

So this was in January. In February we further refined this design, went to further ARC meetings, several more meetings with the neighbors. You can see that this is a whole lot different. We're still tweaking the design. We're trying to break down the massing and the scale and the size and the height of this project every which way that we can.

And here we are to our current design.
Mayor, you mentioned that we had the discussion of taking one floor off so we did, we went back, we took the top floor of units off, essentially creating a four-story building with a five-story corner on it, so the corner is five stories, the middle portion is four stories and then along the alley we have that at three stories so that it relates more to the residential neighborhood; again, design issues, trying to transition this, trying to transition it down.

In doing so this creates a myriad of technical issues, I think you'll see in the
affidavit there is a list of those, which may
not even be all encompassing but there's
several of those as far as code issues. Every
bedroom or every sleeping unit on the third
floor and lower in the city of Lawrence must
have an egress window. We can't take units and
turn them to the inside, they must have a
window for emergency escape and rescue by the
Fire Department, as well as natural daylight.
Even if it's not an emergency escape it's
supposed to have a window for natural daylight
in order to meet the building code.

Between January and the April presentation
some of the major items that we had revised
beyond taking the building down by, building
down, building height down by a single story
right off the top and losing the program off of
that, we also did set back off of the alley, on
the south side we pulled that back an
additional four feet, where the courtyard is
along the alley we pulled that back an
additional five and a half feet, added a
landscape buffer. Again, this was part of our
transitioning to the neighborhood. This is a
downtown project and it's zoned downtown, it's
zoned, you know, it's CD zoned so it is
commercially, commercial downtown but we do
have the neighborhood on the other side that we are trying to transition to. We are trying to pay homage to both sides. And also there was a lot of comment about the height of the Arts Center. There were some comments that were made by Historic Resources Commission in some of our presentations that our project needed to relate in scale and size to the Arts Center so in taking that top floor off and with this new revised design we are comparable or we feel that we are comparable in scale and height to the Arts Center, especially along the alley side and along the New Hampshire side as well.

Looking back from our very first proposal that you saw, kind of the first slide here, the hard corner here was 79 feet. We are now at 63 feet. That is a reduction of 16 feet on the Ninth and New Hampshire corner. At the Arts Center it was 71 feet in our original proposal, now we are proposing 44 feet, a reduction of 25 feet, and then in the alley originally it was 64 feet. This shows 35 feet. That's measured at the south end. It's 40 feet at the north end, there's about five feet of grade difference, I believe what Lynne had presented
earlier showed 40 feet, but given the
difference there, we are 24 to 29 feet less
than what we were in our original proposal.

So these are the design iterations that we
have made in order to accommodate, one, design
issues, technical issues, but comments from
various commissions, comments from the
developers, adjusting our program as we go
along the way. Yes.

COMMISSIONER CARTER: Quick question
before you switch pages. I just want to
confirm if the, on the second set of numbers

there, if the 44 and 71 are correct, then the
minus 25 is wrong, so which is it? Is it --

MR. KIMBALL: The 44 and the 71 are
correct.

COMMISSIONER CARTER: They are correct?
So it's 27.

MR. KIMBALL: Are correct, so it would be
27 feet.

COMMISSIONER CARTER: I just wanted to
make sure which number was wrong. Thank you.

MR. KIMBALL: Yes. So a couple of slides
here and we are going to go into our current
design and you can see the red dashed line
shows where that fifth floor was taken off.
That floor would be actually one level above

83
that so that is our relative height as we get near the Arts Center and also showing where that reduction is. The top, the top picture is looking south from Ninth Street and the lower picture, you can't read the caption on there but that is the New Hampshire elevation with the Arts Center on the far right.

A couple of diagrams to show. This, again, this is from New Hampshire Street looking back to the east. The Arts Center is on, is located on the south end of the project. This is our project. This red dashed line indicates the height of the barrel vaults of the Arts Center. This masked out area represents that same height and what you can see above it is the amount of building that is actually above that line and it's, especially at the Arts Center is, it's six feet taller than that barrel vault at that location but the amount of massing that is actually higher than the Arts Center is very limited on this project.

The elevation that is at the very bottom of the page, and you cannot read the caption, this is looking back from the alley so comparing where the three-story section of the
building comes back to the alley to where the
Arts Center is we are actually I think it's
three and a half feet below, yeah, three and a
half feet shorter than the Arts Center at that
location. Law of averages from front to back
where one side were lower, one side were
higher, so it is comparable, it is very
cOMPArable in scale.
A couple of perspectives and some
renderings to give you an idea of how the
project will be perceived beyond elevations,
sometimes it is hard to read those elevations,
but northeast perspective, this is 901 New
Hampshire project, recently completed and
occupied. This is 901 Rhode Island so you can
see the block. Creating this transition in the
stairstep from a downtown high density area to
the residential, which is a medium density,
which is also a mix of commercial uses and also
CS zoning in these five blocks, we'll look at
that here shortly.
The lower picture shows the view pretty
much from standing from the parking garage, we
may be standing a little bit farther back but
for rendering per, or for rendering sake and to
give you an idea of what the building looks
like looking down New Hampshire we have omitted
what the parking garage would mask from this view.

Couple more slides. You can see the transitional height if we draw a line from the top of 901 New Hampshire across the project site to the relative height of the roof ridge. All the, everything is below that line on this project, again, enhancing that transitional stai...
back from the lot line where we can and where
we can afford to on the project in order to
ease that congestion.

And while we are downtown, CD zoned, so
commercial downtown, across the alley that
zoning is all commercial strip zoning and a mix

of businesses, multifamily residences and
rental housing and not-for-profit businesses.

These next series of slides are focused on
the view towards the back, again focusing on
the residential, or the Rhode Island district
and how this project has been treated to reduce
any impact on the Rhode Island district.

You can see the large courtyard. We've
stepped the building down, we've talked about
that several times, to keep the scale down as
we get closer to the alley but we've also
pulled this fence back and added the
landscaping, we mentioned that earlier but that
is to soften this courtyard and to soften the
approach and then also provide screening for
the courtyard. Then we've also added a
courtyard on this side to be for our guests for
the hotel.

This view down on the, down here is
looking down the alley to the north, so we are
standing at the south end, basically behind the
Arts Center, looking down the alley to the north.

And then same view over here.

Couple of views that we've pulled together to see what this project is going to look like through, from the neighborhood. You will see that these next four slides are, the top will be a perspective. You can see the project in the background, we have done some rough modeling of the structures that are on Rhode Island, and then the site plan at the lower part of the picture has a red arrow that shows where the camera was set in our modeling program so that you can see kind of where that picture was taken from and the angle of view that, that was used to capture this, so that this is looking through, just south of the Social Services League, looking over 909 Rhode Island, eye level, what you are going to see in the background, this is the courtyard and 900 New Hampshire, proposed project, beyond.

This is if you come further north on Rhode Island Street standing in the middle of the street, approximately, and looking back the impact that the project has. We see that there's very little impact due to the height
beyond, beyond the project, or sorry, beyond the houses in that district.

And coming even further north and then

going back across the street, trying to get back even farther so that we could see -- if we stood in the middle of the street here we couldn't see the project so we brought the camera back to the sidewalk, which would be on the east side of Rhode Island, and you can see the project through the houses but there is, there's not a lot of impact, there's not a lot of visibility. We have had some claims that, well, you took all the trees out and this and that and you've adjusted the model. Well, we did take a lot of the trees out because if you keep the trees in you don't see it but, so there will be trees that do kind of filter that vision as well, and we admitted that we've ghosted the trees so you can actually see through.

Coming back down towards the south end of the lot, again, from Rhode Island, looking through the houses, this is one of the largest gaps in the structures so I think this is a model of what you are going to see from that point of view.

Back to our transitional height, showing
we are relating to both structures, we are relating to the height of the Arts Center. The Arts Center, one of the things here that is mentioned in the HRC report was the Arts Center is a civic building and carries a different review than a private building in private use.

Again, with all of these factors combined the design issues that we were faced with to come up with a project that was compatible with everything was nearly impossible if you get every review but we hit almost all of them as much as we can. Much like what Lynne said about the Downtown Design Guidelines, it is a guideline in that if, you want to hit as many as you can but if you can't hit one it doesn't kill the project, it doesn't kill the review.

This is our last slide. This is a cross section cutting through the project, cutting through 901. This is US Bank, an elevation, the alley, 901 New Hampshire, this will be New Hampshire Street, this is the proposed project of 900 New Hampshire, and then the alley again and then the North Rhode Island district with the tallest structures dashed in there, you see the Social Services League is, the addition to it is modeled as the box in the back, but
really what this shows is we've got 62 feet along, from the, approximately 62 feet from US Bank on the east side of it to the west side of 901 New Hampshire recently built, with a stairstep and an elevation change of approximately 17 feet. As we come across the 75 feet of building, then we have a 60-foot right-of-way at New Hampshire Street with 77 feet, give or take some change, really closer to 78, from 901 New Hampshire to 900 New Hampshire. We have stepped the building maximum height down to 23 feet from what was across the street, so again, with the fuzzy, you know, if you kind of squint your eyes this is roughly 20 feet, this is roughly 20 feet give or take a couple, then within our own building and on its own site we've stepped it again 20 feet, which is even more so, which levels out with the maximum height of or estimated height of the structures, the highest structure that would be adjacent to our lot, 646 Rhode Island.

And that is over 102 feet with the courtyard included. We only have a 16-foot alleyway but we've got 102 feet of courtyard
including that, including that alley.

So that is my last slide. I will open it up for questions but -- or defer them till later.

MAYOR SCHUMM: Questions? Mike.

COMMISSIONER DEVER: Micah, you indicated that these are rough estimations of perspective and you used a program to model these viewpoints and you used some I presume scientific methods to take these pictures or simulate these views.

MR. KIMBALL: Correct.

COMMISSIONER DEVER: Because the building doesn't exist obviously, it's all hypothetical. Did you identify any perspectives that were negative or severely changed the viewpoint of this project and omit them from our presentation or was there any obvious information that was omitted from our review tonight so that we can make a clear and careful decision on this?

MR. KIMBALL: No, there wasn't. In fact, there was internal discussion on some of the images that we were showing whether they were favorable or not because that's why I mentioned the parking garage. That camera angle -- and
everything is drawn to scale, the houses, the streets, it's overlaid off of a site plan that we got off of the City website, the GIS website, so everything is to scale, everything is proportionate and we can measure exactly what we've shown and we did not omit any because we thought that they might be a deterrent in any way. In fact, we did have to occasionally hide a building because you wouldn't be able to see the project coming around either 901 New Hampshire or the parking garage or some of the other projects that we had modeled in there, so we would hide those and it makes the project look a little bit bigger and we had some internal debate with it doesn't, you know, it doesn't do us a lot of justice if the project looks bigger but if it's not, then you can't see the project, you're looking at the inside of a wall, so we did debate that, but we did not omit anything.

COMMISSIONER DEVER: One more question.

And did you adjust any of the heights that these representations were taken from in order to improve the way this looks from a scale perspective?

MR. KIMBALL: No.

COMMISSIONER DEVER: Okay. Thank you.
COMMISSIONER CROMWELL: Likewise I guess on here, the grade, the various terrain the elevation, grade, was that taken into account?

MR. KIMBALL: The five feet of elevation was the grade of the slope from the south to the north, the five feet was, and then there's approximately two feet of slope across the site as well from the east to the west.

COMMISSIONER CROMWELL: But from the position of the camera on Rhode Island Street?

MR. KIMBALL: Yes, yes, it, actually it was, yes.

MAYOR SCHUMM: Yes it was what?

MR. KIMBALL: It was taken into account with the five feet of grade, the slope from the south to the north end of the lot.

MAYOR SCHUMM: Mr. Amyx.

COMMISSIONER AMYX: Micah, on the building plans the small structures that are on top of the buildings at the different levels of the buildings, are those air conditioning units up there?

MR. KIMBALL: Yes.

COMMISSIONER AMYX: The are?

MR. KIMBALL: Those are mechanical, the condensing units, yes.
COMMISSIONER AMYX: Mechanical's all the
on top? The building that is in the courtyard
that would be just to the south of the building
adjacent to the alley, what is that building?

MR. KIMBALL: That is our mechanical area
to feed the parking garage and also contains
some of our trash.

COMMISSIONER AMYX: Okay, so there is
mechanical facility in that building and it's
all enclosed and so --

MR. KIMBALL: It's all, it would be, yes.

COMMISSIONER AMYX: -- noise won't filter
out of that thing?

MR. KIMBALL: Right. That is the intent.
We've got three mechanical areas on that
ground, on the site plan or the ground floor.
One is for the retail but it is in the loading
dock area so it is contained within the inside
of the building. The other one you pointed
out, and then, and then there is another one
for the hotel, for the lobby of the hotel, and

these will also, the, when I say mechanical
area, most of our condensing units are, for the
hotel, for the rooms themselves they're P-TAC
units so it's a through-wall unit. The systems
that are needed for the common areas are not
that large for the hotel because most of it is
served room by room, as you guys have seen in any hotel that you've stayed in, or not any but most hotels, so those mechanical units are rather small but it also houses electrical meters, gas meters, other utilities, you know, some of the, some of the uglies of the project but, in order to screen them, but they're not noisy, they're not, it's not something that will make noise.

COMMISSIONER AMYX:  Well, follow up to that is is as I look at the factors the only factors as your counsel said that we could only consider in this and those being design issues. I assume that this is a design issue or technical issue of the project, so --

MR. KIMBALL:  It's both. It's something that we had to do. We did discuss with the neighborhood extensively about the mechanical noise and the concern of the mechanical noise,
the inside as they are on the outside, if that
is too loud to the person that is three feet
from it our guest satisfaction is going to
plummet and we're going to lose occupancy, so
one, we have to maintain that for ourselves, as
well as respect out of the neighbors, and then
also we've placed as much of the mechanical on
the roof as we can in order to isolate the
noise to the roof and then push it also to the
center and keep it away from the alley.

MAYOR SCHUMM: Anything else?
Okay. Continue, please.

MR. KIMBALL: Thank you.

MR. WATKINS: I think Micah's --

MAYOR SCHUMM: Each time you speak will
you please state your name for the court
reporter.

MR. WATKINS: Dan Watkins.

MAYOR SCHUMM: Thank you.

MR. WATKINS: Micah's presentation
demonstrates why this project, why this site
has been difficult to develop over the last 12
years. It is hard to make work from design,
technical, planning districts, as well as the
conomics.

Next we would like to have the architect
and developer, Mike Treanor, talk about the
community planning issues as well as economic
issues that go into this, and I would point out
that both his affidavit and Micah's affidavit
go into much more detail, as do the minutes and
all the material that you have from the
meetings that took place as this project
evolved over the last several months.

MAYOR SCHUMM: Dan, is that the last
speaker for the applicant?

MR. WATKINS: Yes.

MAYOR SCHUMM: Okay.

MR. WATKINS: Except for in rebuttal.

MAYOR SCHUMM: Rebuttal at the end, yes.

MR. TREANOR: Michael Treanor, Treanor
Architects. Although I have wanted to a lot of
times, this is the first time I have talked

publicly about this project and I want to point
out a few things. I've got a four-page
affidavit that I have submitted to you guys
that basically all says the same thing, that
with all of the kind of comprehensive
guidelines that we have for downtown, that our
project helps support those comprehensive
guidelines, which is to increase density, to
increase the number of people that are downtown
spending money. We're going to have people,
out-of-town guests at the hotel. The north project anticipates more apartments. It has a synergy with the downtown which I think is what the City is looking for.

It has been stated in your public policies that having this kind of development in downtown is a good thing. It is good to have people on the ground, visiting the shops, visiting restaurants, and this kind of long-term stay product that is probably the highest quality long-term stay product out there, that's the Marriott, will be very successful at getting people to spend money and stay downtown for longer periods of time.

The affidavit goes into Horizon 2020 and the downtown comprehensive plan and it speaks for itself but, you know, the point being is that this is a very good project from that side.

If we as architects could do a project that is prudent and feasible for the investors and for our clients and to be, make all of our neighbors completely happy of course we would do that and we would want to do that. This project changed in the middle when the north project became available and it looks like that we could build some apartments in that location
and not have to have the density that we have here.

We do a lot of analysis with Doug Compton, his company. They have a team of managers that we meet with to define what the project needs to be, the way the project, the unit types need to be. We meet with Chuck Mackey and his team that are the hotel developers and their defined needs of they have prototype drawings from Marriott. Marriott themselves will eventually get this plan once we settle on the plan and then do their own vetting of the project, but we are not there yet.

The feasible and prudent from our side of the table is is it financeable? Is it a project that is attractive to banks? Is it attractive to our investors so that they can put up those large numbers you've seen on the screen? You know, who, our group that we have put together and others are the ones that are going to put the money up and have the return. You know, that takes trust and it is trust built over time with our developers and their track records and us as an architectural firm. We have had, you know, my personal experience is over 30 years in Lawrence. We sort of know
the ropes and what needs to happen.

In looking at the retail in this project, could we build a retail all first floor and then build office or apartments up above? Of course we could. Would it be prudent for us? No. To put more retail down there besides this very defined retail that we are hoping to put in there, which is a marketplace, as we get more apartments down there that is going to be in demand. That, we tried to narrow the amount of retail we have on the first floor.

We have our first floor hotel lobby, which takes up about half, and then we have, or little more than half, and then we have our retail that takes up about 7,000 square feet. We are trying to be very focused on that 7,000 square feet to provide a market in that area. Do we have it yet? No. Will we? I think we will. We're talking to some people now and making progress on that. And our developer, Doug, and Chuck are both enthusiastic about that and when they get enthusiastic with those users it seems to happen.

The 901 building is a great example of being very judicious and what we have is a spec space. We had very little risk on that project. We had the apartments with a very
proven apartment developer that his track record said that we would have great occupancy. It's full. We have an office space on the second floor that was planned for First Management, Doug Compton's office. It's full. The first floor was planned for our gym and restaurant. The restaurant is not quite in yet, not quite a done deal yet but that is the last 1,500 square feet in the building, and the idea there is to, by preleasing and getting our people involved it takes the risk out of the deal, and that is where we, if, when we look at other projects, you know, we're not going to spec some office space, that just isn't going to work, it's not going to be financeable. It's going to be hard to spec much more retail than what we have in our building. You know, our retail is down to, you know, 10 to 12 percent of the overall of the building and, you know, that is a reasonable risk, we're going to get somebody in there if it's not the market. We really want the market, you know, it is an exciting prospect to have that down there.

If we could have made all of our neighbors happy with, you know, we would love to. We are
not going to ever do that. We've got a building that transitions nicely to the neighborhood. We haven't mentioned this but the Social Service League will, if they accept our help will get a new structure for their sales floor in the back, not the old historic building but the building that was built right after World War II, I believe that's when it was, which is in dire need of some energy efficiency and rebuilding, needs to be replaced, and we plan on doing that as part of our project.

We are enormously excited about this and, you know, it's dragged on, it's been one whale of a process here. Hugh mentioned back nine months ago that this would be, this would result in a better building. It has resulted in a better building. I think we're there. I don't think we're going to go any further. This is a formal appeal, obviously, and we are putting a lot of things in the record, but we are there, we're ready to go and we're excited. If you guys have questions I'm here. MAYOR SCHUMM: Questions? COMMISSIONER DEVER: Can you address some statements that I have read, I think in a couple e-mails in a formal submission to the
City regarding the large lobby area that
occupied the first floor retail section of the
building and the excessive use of that space
for lobby? Can you explain to myself and the
other commissioners why we have such a large
lobby relative to the size of the building?

MR. TREANOR: That lobby comes to us from

Marriott. That design comes to us from
Marriott. We adapt it to our building. That
is within what they see as what is needed as
lobby for the building so that's where it came
from.

MAYOR SCHUMM: How many square feet is the

--

MR. TREANOR: The rooms are the same, same
thing.

MAYOR SCHUMM: How many square feet is the

lobby?

MR. TREANOR: It's about nine, 9,000.

Excuse me, 6,500. The retail is 7,000.

COMMISSIONER DEVER: Thank you.

MAYOR SCHUMM: Other questions? Thank

you.

MR. TREANOR: Thank you.

MAYOR SCHUMM: Your presentation has been

concluded at this point, is that correct?
MR. WATKINS: (Nods head).

MAYOR SCHUMM: We are going to take a ten-minute break at this time.

(A recess was taken.)

MAYOR SCHUMM: Everybody please take a seat. Okay, we are to proceed with the presentation from the attorney that represents nearby landowners and homeowners.

You can state your name, please, sir.

MR. SCHNEIDER: Sure. My name is Ronald Schneider. As you stated, mayor, I represent a number of homeowners in the neighborhood and I thank you for the opportunity to address you, mayor, and the rest of the commissioners.

Before I begin --

COMMISSIONER DEVER: Go to the mic.

MR. SCHNEIDER: I'm sorry. Can you hear me better?

COMMISSIONER DEVER: Yes.

MR. SCHNEIDER: Okay. Before I begin I would like to give each one of you a packet and the packet is numbered in the form of exhibits, which I will be presenting on the overhead and that makes it easier for you to read versus trying to understand what is up there.

MR. WATKINS: Do you have an extra one?

MR. SCHNEIDER: No, but I can give you
one.

MR. WATKINS: Is it stuff that's been submitted before?

MR. SCHNEIDER: No, it hasn't. Some of it has, some of it hasn't.

First I would like to address -- and I will try to stay in the order that you received presentations. Of course, not knowing exactly how it would go, my assumptions may or may not have been correct on what was presented. I will also try to stay within the 20-minute frame. There was a lot of information presented beforehand by the proponents. To get into a detailed analysis of that would take an extreme amount of time. I don't intend to do that, and frankly some of the information I don't think was relevant and appropriate for consideration today so I won't rebut that or attempt to.

First and foremost, dealing with counsel's understanding, your City's counsel's understanding of and presentation of the applicable law, I generally agree with almost everything. The only exception I take with the finding by counsel is No. 14, and that is marked as Exhibit No. 1 in your file, and No.
14 deals with whether or not sale of the land
is pertinent or relevant, and I am providing
you a copy of the decision rendered in Allen
property which involved the City a number of
years ago and the court stated that a genuine
offer to purchase and preserve the property,
particularly by a government entity or a
historic preservation organization, could
indeed be a relevant factor for consideration
depending on the terms, offer, and other
circumstances.

Clearly the statute does not require the
sale. This will become pertinent and relevant
as I proceed and you will see information
regarding that subject as well.

The next item I would like to address is
the statute itself. We have heard discussions
about what you are supposed to be doing here
today and you have received quotes about the
statute. Statute's right there. That is what
is controlling these proceedings today, KSA
75-2724. This project should, or shall not
proceed until the governing body of a political
subdivision, that's you, in the case of a
project of a political subdivision or
instrumentality thereof, the City of Lawrence,
the city commissioners, has made a
determination, based on the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use.

That's it. One paragraph tells you what's going on. That tells you what the law is. You may not like it but it is the law.

I suggest to you that you are facing a unique situation in the sense that you are sitting as a quasi-judicial body. You do this almost all the time when you hear zoning matters for individual pieces of property and I know as elected officials you like to have more flexibility than probably quasi-judicial proceedings grant you. You are probably more used to acting as a legislator, with the ability to confer with anyone you think is important in the sense of getting their input, getting their feedback and getting their analysis, and doing what you think is in the best interests of the community.

This law doesn't say that's what you should do. It says you need to look at these specific questions and these specific issues
must be decided by you in your quasi-judicial
capacity and determine that there is no
feasible and prudent alternative to the
proposal and that the program includes all
possible planning to minimize harm to such
historic property resulting from such use.

Therefore, but, therefore, what does the
law require? This project cannot proceed and
the inquiry cannot, should not go any further
if you determine that there is a feasible and
prudent alternative to the proposed project.

Now, as I've sat here for the past hour or
two listening to the proponents their
proposition and argument is essentially this
simple: That there is no feasible and prudent
alternative other than the project proposed to
you. They are saying that the only project
that is feasible and prudent is a hotel as they
presented it, which is a four or five-story
hotel, with a rooftop restaurant, with a
rooftop swimming pool, 124 space underground
parking, and in addition, to top it all off, it
requires public financing to make it
financially feasible. Now, if you accept that
proposition, then you are saying and you must
say in order for this to go forward that there
is nothing else that is feasible or prudent as
an alternative to the project.

And I want to emphasize it is an
alternative to the project, as Commissioner
Dever inquired, not an alternative design for a
hotel. It is any use, any use that is
permitted under the law that could be
considered evaluating all relevant factors.

If you conclude there is no reasonable and
feasible, feasible and prudent alternative,
then the second component is that you must find
that the proposal includes all possible
planning to minimize harm to the historic
property. That's been addressed. That's what
the statute says.

Can a reasonable person conclude that this
is the only option, this is the only feasible
and prudent project available at that corner?
I would suggest to you just on its face common
sense says of course not.

What you are not here to consider and
determine is whether the project will encroach
upon, damage or destroy historic property. The
HRC has made that determination. That's final.

You may disagree with it but you are not
authorized to overturn their decision on that subject.

Frankly, the presentation from Micah was quite interesting, I've seen it before, unfortunately, but it's quite interesting and I think the whole presentation was somewhat irrelevant because that dealt with the project itself and that was the presentation that went before HRC. Your challenge tonight is to look at alternatives, all relevant factors.

No. 2. You are not to determine if you like the project as presented; that's not your role here tonight. It is not your obligation or responsibility or even consideration that if you want another hotel downtown. It is not for you to decide if this constitutes a good project. It is not for you to question whether or not it is good use for the property regardless of its impact on historic properties. You are required to determine feasible and prudent alternatives to the project.

Now, the way it is presented tonight, at least by the proponent, the feasible and prudent alternatives they want you to consider or in that context is what is feasible and prudent to them as the developer. The law is
not that. The law is what are the feasible and prudent alternatives to the landowner? What can they do that is feasible and prudent concerning all relevant factors?

When considering feasible and prudent alternatives I ask you to look at what I have marked as Exhibit 3.

Wrong direction. There we go.

COMMISSIONER DEVER: Can you tell us where this came from, Exhibit 3, please?

MR. SCHNEIDER: Sure, be happy to identify it. Exhibit 3 is staff report and I am making reference to, first to page 4 from the staff report and I think that is a staff report of -- okay. There we go. Okay, thank you.

The staff report that was done in April of this year and this is page 4 and this is from the staff report and the reason I bring this up, not only is it contained in the staff report but this is a summary and a statement of what has already been discussed, what you should be considering, what are feasible and prudent alternatives.

The feasible and prudent alternatives are defined on what factors you should consider,
already. I believe there has been a mis-, a wrong focus on the application of these. There
has been a focus on how these apply to the proposed project. These in fact, if you read
the rules, it is how they apply to feasible and prudent alternatives, technical issues, design
issues, the project's relationship to the community-wide plan, if any, and economic
issues. In other words, every time you look at this proposed project what are the alternative,
feasible and prudent alternatives and what is relevant in determining whether or not those are feasible and prudent? Then we have the definition and discussion about the program including all possible planning to minimize
harm.

The point I wanted to make out also in the staff analysis is that the Historic Resources staff is of the opinion that there are feasible and prudent alternatives to the proposed project and that there is additional planning that should be undertaken to minimize the harm to the listed properties. That was before the final draft that you have.

On the next page the staff concluded, and they couldn't do a better job than I could.

But before I get into that I would like to
address these issues a little more clearly.
Recall that or realize that you have these
guidelines that apply state-wide to the review
process. As you may assume, the vast majority
of times you're dealing with existing
structures. It is rare to have vacant lots
that are being evaluated, and to understand
this is easier when you understand it within
that context, so if you have an existing
structure, and let's say you have a grand old
mansion that has not received proper attention
over the years and it is ready to fall down,
the question is then what are the feasible and
prudent alternatives, and as you know, just
about any structure can be renovated or
rebuilt. There are a number of factors that
should be taken into consideration.
So you look at the technical issues: How
take to make sure that the property is stable
and doesn't fall down?
Design issues: If it's a house can it be
redesigned to accommodate retail, commercial?
Does the project relationship to the
community-wide plan, what is it? If there is a
proposed option that is feasible and prudent,
if someone is proposing to put a wine house or a wine shop in a beautiful old house in a small village in western Kansas there's a good chance that that doesn't meet with community-wide project planning or other uses, and maybe I'm being a little too sarcastic on such a subject, but there is a particular use that is being proposed and how does it correlate and relate to the community-wide plan.

And the economic issues, which all too often are a controlling factor. Even though we can restore just about any house, any structure or any building, does it make sense? Does it cash flow? I can restore a gorgeous house for $1.5 million but if I have cash flow of only a hundred thousand dollars a year clearly it's not economically feasible.

In relationship to this project we have a vacant lot and those analysis take place in the staff's report on page 5. I won't go into the detail of them but in essence the staff report stated, which still holds true now, even though we have a somewhat modified project, that a smaller structure with fewer amenities, parking and pool, would be less expensive to construct. There are economically viable two and three-story buildings in downtown Lawrence. A
COMMISSIONER DEVER: Can I interrupt? I'm just confused. How come you're using this information from the previous submittal when there is a more current report from the staff?

MR. SCHNEIDER: Because it doesn't address these issues.

COMMISSIONER DEVER: Oh, it doesn't?

MR. SCHNEIDER: No, it doesn't.

COMMISSIONER DEVER: At all?

MR. SCHNEIDER: Not this, no, it doesn't.

COMMISSIONER DEVER: Okay.

MR. SCHNEIDER: And it's essentially the same issue.

COMMISSIONER DEVER: Okay.

MR. SCHNEIDER: And then the, to address you specifically, Commissioner Dever, because the HRC --

MAYOR SCHUMM: Just to clarify all this, I'll let you continue in a second, but after Ron makes his presentation we'll ask staff to address some of these issues that you raise.

COMMISSIONER DEVER: Okay, I just am trying to track any that we have and it's confusing me when we're looking at --
MR. SCHNEIDER: Sure. If you look at --

COMMISSIONER DEVER: The project was changed substantially from the first time. I mean, you're quoting information on a project which I respect and want to listen to but it is relative to a project that has changed in size from the first time.

MR. SCHNEIDER: No, this isn't the first report, this isn't the first report, and I apologize.

COMMISSIONER DEVER: Oh, this isn't?
MR. SCHNEIDER: No, it is not.
COMMISSIONER DEVER: The first page was, though?

MAYOR SCHUMM: All right, let --

MR. SCHNEIDER: No, it wasn't. I should have the date.

MAYOR SCHUMM: All right, hold on just a minute.

MR. CORLISS: I hate to interrupt but I think staff needs to explain.

MAYOR SCHUMM: Whoa, whoa, whoa, whoa. One at a time now. I'll direct traffic here. Dave Corliss, please, your comment.

MR. CORLISS: I'd ask Scott to comment on what report Mr. Schneider is reading from because he is stating that this is from a staff
report. This is not, at least to my understanding, from the current staff report.

MR. SCHNEIDER: That is correct. That's correct. I don't want to misrepresent that and I've never tried to.

MAYOR SCHUMM: Okay, which -- all right, now I'm confused. Which report is this coming from that Ron Schneider is reading from?

MR. McCULLOUGH: Scott McCullough with the Planning Office. Mayor, there were, as you may recall, two instances where a project came to the City Commission upon HRC determination and I don't remember if this was the first one or the second one but each time that application, the applicant had revised the project and essentially completed an alternative or showed, reflected a feasible and prudent alternative. This was a report on one of those times where we believed there was a feasible and prudent alternative.

The project before you today was revised from one of these former times, went through the HRC process, came back on appeal. This is not our current staff report on the appeal. The current staff report is posted in the packet, which has different conclusion,
different conclusions than what we had at a
different time in the process.

COMMISSIONER DEVER: Okay, good. I just
wanted to make sure.

MR. SCHNEIDER: That's correct, and I'm
not trying -- if I've mis-, if I've confused
you that was not my intent. This represents
the last, the previous proposal that was coming
before the City Commission that was withdrawn.
The only difference between that and the
current proposal is that it was reduced by one
story. The current staff report, in my

opinion, does not address these details even
though all of this is still relevant. That was
addressed at the HRC and at the HRC the members
of that Commission stated that you still have
these problems of mass, size and height. Those
are the same issues that they addressed and I
am bringing it up because at that time, even
though it was a story higher and it was
unacceptable, it's a story lower now and it was
still determined to be unacceptable to the HRC
according to the applicable law.

The HRC determined then, which is
applicable now, that there are alternatives,
that there are feasible and prudent
alternatives. One, a smaller project that
would be similar in, be smaller in scale and
massing in the Lawrence, to the Lawrence Arts
Center building is what they are recognizing.
No. 2, a project with fewer uses that would
require a smaller building.

Economic issues are the same thing. The
reduction of uses for the proposed construction
at this site will reduce the initial cost of
construction. A project without the costs
associated without the underground parking is
possible.

That is extremely important because
consistently everything that you have received
regarding this project for analysis and
otherwise includes a parking garage of 124
underground spaces. The current zoning, CD,
does not require any off-street parking. It is
a choice made by the property, or the
developers, for reasons that are probably
sensible, probably mandated by Marriott that
they have to have parking on site.

The issue then, what else other than a
hotel or another project that does not require
underground parking? What can be considered?
In doing so I would like you to look at Exhibit
4, which I have given you, and I will read it
because this does not come across well but it is all the nonresidential district uses available for CD. There are numerous uses, including household living, there are community facilities, there are medical facilities, there are recreational facilities, there are religious assemblies, animal services, eating and drinking establishments, offices, parking facilities, retail sales and services, does not permit sexually oriented businesses, though, transient accommodations, and some vehicle sales and services under special use permit, same for industrial facilities, and then there are other uses on the second page which include some form of recycling facilities, communications facilities, and special uses for adaptive reuse which really don't apply here. The point I'm presenting that is that there are almost an infinite number of uses permitted within this district. What is feasible? That's what -- and if you look at the statute and you look at the rules and the information given to you by counsel, feasible, what is suitable, what is possible, what is capable of being accomplished; prudent, good judgment, exercising common sense when you go about a project, determining whether or not it
is prudent.

Based upon the developer's proposal, the most apparent uses are residential, office, and retail. Now, the office is not included in this particular project but based upon what they've done across the street and what they are proposing to the north they apparently think that some office space is still needed.

I think it is obvious to most of us that office space throughout the community of Lawrence is not in huge demand. Downtown Lawrence seems to be demanding, from everything the studies show us and what the proponents suggest, residential is in big demand and that there is still a need for the right type of retail.

The residential that has been discussed are apartments and residential in the form of hotels or long stay. There has not been a discussion of condominiums. That is an alternative that could be considered here and has not been analyzed as far as I can see.

The cost analysis that the proponent has used for the various projects for a retail use range from 10 to $14 a square foot. I would like to show you some rough calculations, and by rough I mean I have crunched numbers using
the figures given by the proponent in their
analysis, and you have that in your packet. It
is referred to as Exhibit 5. The basic land
and structure cost, the land acquisition,
according to the proponent, is almost $700,000.
We have space of 43,393 square feet at $133
development cost according to their
projections.

There was a conflict that I did not
understand and that is on page 2 of Exhibit 5.
I've calculated that figure at $5,771,000 and
change. The developers had calculated it at
6,981,000, almost 653 -- $953. The difference
was explained earlier in their presentation.
The figure that I used for calculating the
43,393 did not take into consideration common
space, such as stairwells and all that, so the
apparent conflict has been answered by them.
The total cost, and if their figures are in
fact correct, I would add approximately a
million dollars to that so it's about 7,500.
Those are basic land and structure costs.
The other costs identified by the
developer are site improvement costs, and as
one of the analysts pointed out who represents
the consultants you've hired, these costs are
subject to change. We don't know really how
they are calculated and how accurate they are
but site improvement costs of nearly $850,000
is questionable. In order to determine the
validity of those and the accuracy of those we
need to see the documents to calculate those.
Maybe they are in that packet of information
you have been presented earlier, I don't know.
Development fees of four percent,
$413,000. I don't know if that is reasonable
or typical or customary but that is a fee that
the developer is going to get.
Contingency fund of 6.5 percent. As I
understand this, this figure, this is a
standard protocol that the investors or the
lenders are going to require to have sitting on
the sideline almost as an escrow account if any
of the estimates are off and that they have
resources to make a correction.
And now the parking garage. It says 114
spaces. I think it is actually -- no, that's
correct. I was going to say 124. It's 114
spaces. That's $2,500,000. If you look at the
actual hard cost that accounts for almost a
quarter of the total cost of this project.
I suggest the very top figures are certain
based upon the figures they had given us for
land acquisition and cost of construction. The other costs identified by developer I believe need further analysis and scrutiny.

Having given you that information, I would encourage you to consider the optional uses that should be considered based upon not only what many may believe are options but are options based upon the applicant's own consideration of various needs and uses necessary for downtown. I have used a conservative figure of $14.50 a square foot for office space and a conservative figure for retail of $10 a square foot. For those of you who know downtown Lawrence, I think you will have to agree that these figures are conservative. The reason I am giving you these figures is to get a good sense of what the projected annual income is for each such combination of uses with their proposal of a three-story building.

First we have office/retail, office two floors, retail one floor. That comes out to about $566,000. If you use a figure that I think is probably more realistic to the value of office space, which is $19.50 a square foot, that figure actually comes out to $711,500. No. 2, apartments/office/retail
You have a total of three floors, one each, 554,250. Add another 73,000 if you are calculating office, excuse me, apartments at -- I misstated. If you are evaluating offices at 19.50 a square foot it's $627,000. No. 3, all offices, if you add a figure of 19.50 a square foot it comes out to 850,000. I again have a conservative figure at 14.50 a square foot.

Apartments, two floors, retail, 542,000. And the final figures of office/apartments combination, six hundred eighteen five, if you change that office space from 14.50 a square foot to 19.50 a square foot it comes out to 763,500. That is for a three-floor building using the square footage proposals that the proponents have asked for.

The developer's total projection for two-story apartments floors less a parking garage is $9,607,384. If you finance that at 80 percent of the developer's total projection that is $7,685,000 -- nine hundred and seven dollars, excuse me, and twenty cents, financed at 5.25 for 25 years the annual debt service is $501,000.
I am giving you that information so you can compare that to the potential income on the three-story commercial building that is either residential, office or retail or a combination thereof.

Alternative projections rely upon only the cost of the land acquisition and construction of the structure and site improvement costs. That's $7,311,550. That does not include the other costs that are questionable. Site improvement costs also probably require dramatic changes because I perceive that the majority of those have to deal with building a two-story underground parking lot, so if that is not done those figures would go much lower.

If you finance that you get an 80 percent of that figure comes out to an annual debt service of $431,000; again, an alternative projection for viewing feasible and prudent alternatives to the project as presented and considered.

You have before you a presentation that Town Peterson, who is one of my clients, presented to you by e-mail. I don't know if that is formally part of the record or not.

COMMISSIONER CROMWELL: Yeah.
MR. SCHNEIDER: Is it? If it isn't I would like to make sure it is and I have an extra copy.

MAYOR SCHUMM: We will accept it as part of the record.

MR. SCHNEIDER: Thank you.

MAYOR SCHUMM: It is in digital form.

MR. SCHNEIDER: Thank you, mayor. I would suggest to you that you are going to also hear additional information from Kirk McClure, who does a similar analysis of a building that is substantially smaller in size, 10,000 square feet per floor, retail, residential, some off-street parking, not an underground parking lot. The off-street parking will probably provide anywhere from 15 to 22 spaces. Both his analysis and Town Peterson's show that there is a rate of return, estimated rate of return of 10 to 18 percent, on the high end of what is acceptable by industry standards.

I have made reference to sale of the property. The record should reflect that I in fact on behalf of my clients inquired to see if the property owners, who are known as 9-10, L.C., were interested in selling the property.

That letter was sent to them and they responded
to me, kindly they responded and basically
said, no, thank you, and that letter is
attached also where they advise that they have
a current purchaser, and that, of course, is
the developers.

The only reason I bring that up, because
under the law I believe it is relevant because
now we have the Lawrence Arts Center interested
in purchasing a lot to the south which is much
smaller than this particular project. One of
the alternative feasible and prudent uses here
is clearly using this site for the Lawrence
Arts Center's needs. It's larger, it's going
to provide the same needs they need as an open
space to do outside art projects, but the thing
that's even more attractive, it's less than the
purchase price, as I understand it, from what
is being considered for the building currently
owned by the Salvation Army, and there is no
cost of demolition.

In order to know how profitable that is to
the owner right now we are told that the owner
is selling it to the developer for $700,000.
Even at that price it is a feasible and prudent
alternative to the Lawrence Arts Center and the
City Commission to consider. We may learn that
the purchase price of this particular property,
which is relevant, in my opinion, is so much lower than $700,000 that a feasible and prudent option could be far less than a $700,000 sale price. I am not suggesting, however, that the law requires the property owner to have to sell it but the law does say if it is going to be used by a government agency or something comparable that will consider historic preservation considerations that is a relevant factor.

I will try to wrap this up pretty quickly because I know you have a lot of people to listen to. You have before you the obligation to determine if there are feasible and prudent alternatives. You have information that shows you that there are feasible and prudent alternatives. You have information that indicates without a doubt, and the staff has recognized, that those feasible and prudent alternatives are most importantly considered when you realize the underground parking lot is not necessary. When you take that out of consideration, when you take out the costs associated with a pool and a restaurant on top of the roof the costs go way down.

The feasible and prudent alternatives are
not what is available to a hotel developer or a
developer who wants to build a hotel, it is the
feasible and prudent alternatives that are
available to the owner of the property.

The developer argues that there are no
feasible and prudent alternatives, that the
only alternative, the only option that they
have and that the owner has is to build this
hotel as presented. That is on its face
irrational, improper, and just can't be found
to be a realistic conclusion.

I would like to address a couple other
issues that were brought up tonight that were
not previously presented. First and foremost,
you have in front of you a large packet of
information that counsel presented to you and
Commissioner Cromwell inquired sarcastically,
"Do we have to read that tonight?"
I don't know what's in that. I know there
are some affidavits that I've never seen.

Under the circumstances I believe I have an

absolute right to review those things in order
to respond accordingly and if need to
supplement my response to tonight I need that
opportunity. How much time that will take I
don't know until I see the documents.

The other point is you have hired
Springsted, as I understand it, to determine if it is feasible or prudent to construct a three-story apartment building. Unfortunately, the burden to prove that is with the developer. I don't think it is the City's obligation to prove that one way or the other. However, since you have chosen that I suggest to you it would also be appropriate to consider the alternatives that are also out there, most importantly to consider an alternative that includes, as your own staff recognized, could be constructed as a smaller project, a project that did not include two stories of underground parking and other uses that were adaptable to the project, including, and the staff didn't say this, but what is apparent to me is condominiums.

When Springsted looked at this for alternative, feasible and prudent alternatives they should have been directed, if you were truly looking for feasible and prudent alternatives they should have been directed to say what can be built on this site that is three stories or less and meets the criteria identified by the Historic Resource Commission concerning space, size and mass? They were not
asked to do that and I think that is a mistake.

Also, based upon the information given by Springsted, and I must confess I had trouble understanding everything that was going on with all the financing and if you understood that substantially well and understood the implications between the north-south project and the whole district I congratulate you but I question if anyone is able to understand all of the implications of that at this time. Whether or not it is relevant is another question.

But having said that, what I was able to gather from that presentation is that this project as presented cannot go on its own with private funding, that it absolutely positively as presented requires public funding and assistance -- public financing, I shouldn't say funding, public financing and assistance to make it go, that the north project is more feasible and prudent economically than the south project and the south project probably wouldn't go even with public assistance but for the north project.

Based upon everything I heard, one has to ask, is the project as presented to you tonight, with all the amenities, underground parking, the roof and the need for public
assistance, feasible and prudent on its own? I suggest it does not appear to be so.

So having said that, I'd previously addressed either the HRC or this Commission stating that in many ways this reminds me of someone trying to put an elephant in the back yard of a residential neighborhood yard, that the owner wants to have a pet elephant but their yard is just too small so they trim, clip the toenails, cut the hair back, cut the tail back and the ears and say now it meets it. Well, everyone knows you still have an elephant in the back yard so by analogy we still have an elephant in this back yard. There are alternatives to the pet owner, as there are to the property owner here. To the pet owner the alternatives are the obvious: Have something that fits your back yard, a dog, a couple dogs even. To the property developers here an elephant doesn't fit in this yard and there are alternatives, which include a three-story or smaller building, smaller size and it will fit the needs of the community and meet the benefits of the historic district.

Happy to answer any questions. How much time did I take, I'm curious?
MAYOR SCHUMM: We lost track.

MR. SCHNEIDER: More than 20 minutes?

COMMISSIONER DEVER: We don't pay attention.

MR. SCHNEIDER: You don't pay attention?

Okay.

COMMISSIONER DEVER: Only when the shock clock's set.

(Laughter)

MR. SCHNEIDER: Okay. I tried to cut it down. Be happy to answer any questions.

MAYOR SCHUMM: Any questions at this time?

Okay.

MR. SCHNEIDER: Thank you.

MAYOR SCHUMM: Don't go away, I mean don't leave the meeting room.

We have public comment next. How many people, would you raise your hand, how many people want to comment just so I get a --

(There was a show of hands.)

Okay, so we've got about 12 or 15.

Okay, the sign-up sheet is in the back at the table alongside the door. I want you to sign in there first. When you come up to the podium, for the pleasure of our court reporter, I want you to say your name and spell your last name. Please talk distinctly and slowly so
that she's able to write everything down that
you want to say. And there is a limitation of
five minutes, if you can say it quicker than
that we'd appreciate it, so all right.
Proceed, please.
MS. SODEN: I am Leslie Soden, president
of the East Lawrence Neighborhood Association.
Here we are, light at the end of the tunnel
maybe. Anyways, earlier I felt like I was kind
of at the PERC hearing already and not a public
hearing on 900 New Hampshire, which was a
little confusing. Somehow everything has
blossomed tonight into a conversation about
three separate projects, 900 New Hampshire, 100
East Ninth, and the Lawrence Arts Center
Commons. Frankly, this was kind of a
disturbing amount of time spent talking about
two other projects when we are here to talk
about 900 New Hampshire, I'm not sure that was
entirely appropriate, so anyways, I have a few
questions that occurred to me during the
earlier testimony.
The first one is since the developer is
also using his own construction company for the
construction and thus presumably making a
profit that way wouldn't that be considered in
the feasibility study? Is that a relevant factor?

Speaking, No. 2, speaking of the community plan, wasn't the original TIF plan for that corner for a three-story building?

And No. 3, Mike Treanor in his testimony mentioned that retail on the first story is iffy so perhaps if, instead of a market space on the first floor they should consider moving the restaurant space to the first floor from the roof, that way maybe they could completely remove the fifth floor. Wouldn't that be a feasible and prudent alternative for the developer?

Thank you for your time and consideration.

MAYOR SCHUMM: Thank you.

MR. DANNENBERG: Dan Dannenberg, 2702 University Drive. Last name is D-a-n-n-e-n-b-e-r-g.

Just a quick point. We have heard the term "affidavit" several times tonight, and seeing this many suits lined up on the row here takes us back to the days of the Watergate scandal where the joke was "What do you call a man in a suit? A defendant."

No charge for the attempted humor.

(Laughter)
From 2002 to 2012 what was the number of hotel-motel rooms added in Lawrence and what was the occupancy during that time of those rooms? From 2012 to 2022 what is the estimated or anticipated need for hotel-motel rooms during that time and what will the anticipated occupancy be? It would be interesting to know what those statistics are.

I don't want to pay for a parking garage. There are other hotels that are proposed in North Lawrence and out at the Sports Village. Going to have to pay for parking out there, too? I was just looking here. As a taxpayer I'm tapped out. I don't want to pay for anything else. If the developer can make it work, fine, they should do it with their own financing.

MAYOR SCHUMM: Thank you.

MR. BUHLER: Somebody jumped in front of me. I'm Mark Buhler. I live at 1000 Sunset Drive. I've been around here awhile and I just thought I'd come down tonight, even though I don't have any money in this game and I don't think I have a cat in the fight, but thought I'd come down tonight because a whole bunch of my people that I think are like minded to me
don't and they never do and I doubt it's a silent majority but I want to support the project, I want to support the appeal, whatever is technically in front of you, and I figure you will determine what you can and cannot make a decision on tonight and I do support it.

We have needed for almost all my life a way to make downtown more significant than it is and this is a great opportunity. I would not have a nickel in this game. I'm proud he's doing it, he or the group of hes that are, he or shes that are doing it, and it is a great risk and I think we will all win if it occurs.

Thanks very much. Good luck.

MAYOR SCHUMM: Thank you.

That needs to go back to the back table again.

MR. BUHLER: I brought it her because somebody jumped in front of me so we need a monitor back here, mayor.

THE SPEAKER: You're elected.

MR. BUHLER: No, I'm not.

MAYOR SCHUMM: Next, please. No, you have to sign in first. Did you sign in?

MR. DELANEY: Yeah.

MAYOR SCHUMM: Okay, please. Your name and spell it, the last name.
MR. DELANEY: My name is Alex Delaney, D-e-l-a-n-e-y. I live at 2724 Ann Court.

I am here to offer my support of the development at Ninth and New Hampshire. I think that it is very important for the Commission to remember that while the history of Lawrence is important to all, important to us all, what has been decided in the HRC ruling is directly relevant to only a small proportion of the whole Lawrence citizenship, much like what Mr. Buhler just said.

Although this change will have an impact on the East Lawrence neighborhood, what I feel is being forgotten is the impact it could have on the rest of Lawrence. This presents a prudent and feasible opportunity right now to develop this property and show Lawrence as the forward-looking community that we all consider ourselves in front of a world looking to develop our land and economy. I agree that we must protect Lawrence's past, but not at the sake of its future.

Let's also consider the case of the tangible facts in this decision. Regardless of the findings of the HRC, the 900 block of New Hampshire is simply not protected according to
the guidelines of the National Register of
Historic Places. As far as its use is
concerned, I believe the vast majority of
Lawrence residents would prefer to offer
themselves and visitors that go downtown a new
hotel to look at rather than a vacant lot.

Finally, according to the 2010 U.S. Census
Report there are currently 34,319 households in
Lawrence and the city is 33.56 square miles but
the complaint that could end this project is to
save an area of less than .03 square miles the
North Rhode Island Street National Historic
District encompasses. I strongly urge you to
reconsider your previous decisions that could
let such a small part of Lawrencians' interests
carry more weight than everybody else's. Thank
you for your time.

MAYOR SCHUMM: Thank you. Next speaker,
please.

MR. RILING: I'm Mike Riling. I am an
attorney in Lawrence. I have an office at 808
Mass.

MAYOR SCHUMM: Will you spell your last
name, sir, please.

MR. RILING: Oh, Candy knows me but it's
R-i-i-i-n-g.

MAYOR SCHUMM: Thank you.
MR. RILING: I am a member of the Downtown Lawrence board of directors and I was drawing the short straw tonight to come down here and read a short statement that was approved by the DLI.

The Downtown Lawrence, Inc., board of directors supports the development of a hotel on the southeast corner of Ninth and New Hampshire. The board believes that adding population density is critical to the survival of downtown Lawrence. The more people living in the area, short term or long term, the better it will be for downtown. The hotel will bring more customers for downtown businesses, generating increased sales tax revenue for the city at large. The hotel is an important addition to downtown that will help accomplish this goal.

We do, however, understand the concerns of the neighborhood and the developers regarding the height of the building but defer to the judgment of the City Commission on that issue.

If you have any questions I would be happy to answer them, otherwise thank you.

MAYOR SCHUMM: Thank you, Mr. Riling.

Next, please.
MR. McCLURE: Good evening. Kirk McClure, M-c-C-l-u-r-e. I apologize, got a cold; my voice is a little off from its usual.

I am here to speak on the narrow issue of is there a prudent and feasible alternative. The staff has given you a variety of analyses. What they have not provided for you is a financial analysis. The most common use of the word "feasible" in real estate development and in planning is does a project generate sufficient net operating income, income after operating expenses, to pay the debt service on the loan and cover the cash flow that will provide a competitive return to the investors' equity. All right, what that means is you've got to have the internal rate of return that meets a standard. That's what Springsted showed to you.

What has not happened thus far is to give you an analysis of whether or not the project can meet that standard and what I am trying to demonstrate is that in fact it is very easy to meet that standard.

I took a project, ran a simple ten-year pro forma, modeled it similar to the way Springsted said so we wouldn't, Springsted did so we wouldn't have alternative formats out
there. I used construction and development

assumptions from the developer so we wouldn't
have any questions about whether or not those
are reasonable, and I simply looked at a
smaller property, 10,000 square feet per floor,
three floors, 30,000 square feet. That means
even on that small property we would have
retention for parking.

I used the same land acquisition, the same
site improvements, which I couldn't find from
the materials whether or not those site
improvements were generated by the underground
parking, which I suspect they were, but even
so, I looked at a 30,000 square foot property,
same land acquisition, same site, same
construction cost per square foot, same
developers and developer's fee, contingency
fee. Basically I generate a $6.1 million
property. That property, with the same
financing terms that we have been looking at on
this proposal, will generate a ten-year
internal rate of return of over 12 percent.

How do you know that 12 percent is a good
number or a bad number? You use a threshold,
as Springsted did. Now I used -- they
obviously pay for Price Waterhouse, I only have
access to the free one, so I used the National Association of Real Estate Investment Trusts, it's free. They said 10 percent. Simple point here is that this project at 30,000 square feet exceeds the threshold of 10 percent.

I might point out a little note that I hope you got the signal from Springsted when they said general commercial was 8.3 percent but when you go into specialized space like hotel it jumps to 11.6 percent threshold. That is a 330 basis point jump in the threshold for payment. Why is it that big? Hotels are risky. You should make a fair amount of money, they indicated an average of 11.6. But why are they risky? You guessed it. Communities have a habit of building too many hotels. What happens when you have too many hotels? They all start underperforming.

We really can't afford to make the same mistake on hotels that we have made in retail in this community. We need to be careful. Dan gave you a plea earlier. I want to reiterate, we need to know the capacity of this community to absorb new hotel space.

But the point tonight is not to make a
decision on validity of the TIF, it's really do
we have a viable alternative and in fact what
we have is a good viable alternative. The
interesting point is that it does not contain a
parking garage. What is causing the
feasibility problems here and the need for the
public subsidy is the underground parking. Two
and a half to $2.9 million is one expensive
purchase by the taxpayers. If we look at a
property of 30,000 square feet in fact it will
operate the combination retail/residential. If
in fact it has no parking requirement on site
we can go to 14,000 square feet per site,
triple that, add three stories and in fact the
property returns a higher amount and the reason
is because the land acquisition and the site
development costs are now spread over more
square footage.
So the point is that you cannot in good
conscience say there is no feasible, prudent
alternative. The alternative I gave you is
feasible, it's prudent in that it will meet the
plans and the downtown guidelines. Thank you.

MAYOR SCHUMM: I have a question, please.

MR. McCLURE: Yes, sir.

MAYOR SCHUMM: In your analysis, I printed
it off, I have it here, --

MR. McClure: Yeah.

Mayor Schumm: -- in the sixth year you show a 10 percent increase in rent revenue. Is that comparative to what Springsted does?

MR. McClure: Yeah, yeah. We're looking at five-year flat rate triple net leases so I took it, took it out of their operation.

Mayor Schumm: So the assumption, then, in the sixth year you can raise those leases 10 percent?

MR. McClure: Yeah, yeah. Or if it's residential there will be an annual adjustment but we're looking at generally that kind of adjustment over a ten-year process.

Mayor Schumm: Okay. Thank you.

Any other questions?

Commissioner Carter: A couple, Kirk.

MR. McClure: Yes, sir.

Commissioner Carter: When looking at this and talking about occupancy rates and whatnot, feasibility of this project, I had asked about occupancy rates in the town and whatnot and I know that's kind of what you're getting at as well as what's already out there in their current occupancy rates. One of the most
critical things about this is going to be the flag because it won't be comparable to local independent hotel occupancy rates. Marriotts Rewards program and their reservation system and whatnot will not only capture market share but potentially even bring people that might stay near Lawrence to Lawrence because they get their Reward points. I say all that only because your comparison when you're comparing this to another footprint that could be put on that property, as far as me, my considering whether that is feasible or not is more whether or not a, who, is there a flag that is committed to that model that would not require an underground parking that would have that kind of reservation system pull or is that a theoretical or hypothetical building?

MR. McClure: This is a mixture of retail and residential, this is not necessarily a hotel.

COMMISSIONER CARTER: Thank you.

MR. McClure: All right.

MAYOR SCHUMM: Next speaker.

MR. RASMUSSEN: Good evening, commissioners. My name is Stanley Rasmussen, R-a-s-m-u-s-s-e-n. I live at 4701 Turnberry
Thank you all for being here. I wanted to point out that I submitted written testimony on this that is in your packet and I am going to elaborate on that. What I want to focus in on tonight is your quasi-judicial role tonight and what you are trying to decide in this appeal. I want to encourage you to grant the appeal.

There are two key elements that you need to focus on and unfortunately I think Mr. McClure, Counselor Schneider, the East Lawrence Neighborhood Association letter from 25 June and other commenters have made a fatal error in their analysis of the state statute.

The state statute says that you have to base your consideration on all relevant factors that there is no feasible and prudent alternative to the proposal. You have to focus on the proposal that is before you tonight. It does not say, the statute does not say that there are no feasible or prudent alternatives, it's alternatives to the proposal.

So with that I would say that the applicant has met that statutory requirement. Focusing on the proposal, you don't look at alternatives for the property owner or alternatives for the city or alternatives for
the developer, you look at the proposal that is
before you; that's what the statute says.

This applicant has made numerous changes,
alterations, amendments, tweaks, concessions,
and through that they have been able to present
a project where there is no better, no more
sensible, no more realistic alternative than
the proposed project before you tonight.

The second part of your standard on which
you have to base your decision is a reasonable
man standard that says the program includes all
possible planning to minimize harm. When you
look at that you look at the design and
technical issues. They have taken steps to
address such things, and I'm not going to get
them all, but things like lighting impact,
traffic and parking impacts from the property,
the proposal, let's be real clear, traffic and
parking impacts from the proposal, noise
impacts from the proposal, water drainage,
vandalism issues, the height, scale and mass of
the facility, they have proposed to reduce
artificially the height of this thing, I think
it is an unreasonable restriction that they
have agreed to but they've chosen to do that,
and by doing all of that they have done
everything they possibly can, all possible planning to minimize harm on the surrounding community and the neighbors.

Also I think you should look at what is the relation of this project to the overall community and the community-wide plan. I can't think of a better transition from a residential to a commercial zone than having this situation where you go from a residential zone to a commercial residential structure to a strictly commercial zone in the downtown area. I think it's great.

And then I think as part of that evaluation you do look at economic issues. I was shocked by the number of comments that I read in the packet tonight, the public comments that you received that suggested that making a profit was a bad thing. There's nothing wrong with making a profit. At least four of you commissioners up here are private business owners and I would venture to say that all of you have to make a profit so that you keep your employees employed and your doors open. And Commissioner Carter, if I was to come to you for financial advice I darn sure would expect you to give me advice that is going to make me a profit. There's nothing wrong with making a
profit and I don't think it should be demonized
and I am shocked to see that there are so many
comments demonizing making a profit.

So with that tonight I want to get you to
focus on the two criteria that are here before
you, no feasible or prudent alternative to the
proposal, not just feasible or prudent
alternatives, it's to the proposal, that's what
the statute says, and I think the project has
met its requirements to minimize all possible
harm through the planning that they've gone
through, so thank you for your time tonight and
thank you for your service. I'd stand for any
questions.

MAYOR SCHUMM: Question?

Commissioner Carter.

COMMISSIONER CARTER: Actually I guess
could we have staff comment on that
interpretation?

MAYOR SCHUMM: What if we wait until the
end and -- or do you want to ask it right now?

COMMISSIONER CARTER: Just -- that's fine.

MAYOR SCHUMM: I was going to, at the end
of the public comment I was going to ask any
staff person that we want to ask a question of
to come forward and we can ask questions at
that time. Thank you.

MR. RASMUSSEN: All right, thank you.

MAYOR SCHUMM: Any other questions for this gentleman? Thank you.

MR. RASMUSSEN: Do I need to remain for that portion of it?

MAYOR SCHUMM: I think it's probably going to be a staff question.

MR. RASMUSSEN: Okay, thank you.

MAYOR SCHUMM: You're welcome to if you like.

MR. RASMUSSEN: I don't know, I might.

MR. BROWN: Good evening, commissioners.

Dennis Brown, president of the Lawrence Preservation Alliance, B-r-o-w-n. We stand by our written testimony for this hearing that we delivered to City staff on June the 1st, and I do have to make a correction as this is a legal proceeding, I think on that letter I had misdated it May 1st but it was June 1st.

This project proposal has changed enough during the Historic Resources Commission process as the applicant attempted to respond to concerns brought by HRC, LPA and the neighbors you may be able to make a finding that all possible planning to mitigate damage to the historic district has taken place but as
to the question central to this hearing, and I will disagree with the interpretation with the previous speaker, is there a feasible and prudent alternative to this proposal, we have stated from the beginning that as the site in question is a vacant lot it is very likely that a multitude of mixed use projects would be possible here that would be profitable, feasible, and would pass historic environs review. In our written testimony we presented six relevant factors for you to consider in your deliberation on this matter and we do believe there has been other testimony presented, a lot of testimony, with relevant factors very specific to the question you are being asked to resolve.

You are being asked to consider a totally different question than the HRC considered. The question for HRC was would the project as proposed damage and encroach upon the listed property and their determination was that it would. Now the next question falls to you. Given that the proposed project, if built, would damage the listed property is there anything else or multiple things that could be built as an alternative that would meet current
zoning, pass historic review, contribute to the community good, and be profitable to the property owner? If a combination of pertinent, relevant factors suggest to you that there are one or more feasible likely alternatives, then you need to make that finding that there are feasible alternatives to the proposed project.

You are currently being asked to support a development that itself is not feasible without public assistance. This vacant lot needs a project that generates tax revenue without public assistance. Can you really make the determination that that outcome is not possible here?

Much is also being made of the extra cost generated for this project by underground parking but I also want to emphasize the rooftop restaurant and the swimming pool, maybe not really needed at the corner of 900 New Hampshire and certainly large cost additions to the current project.

We believe that Town Peterson's three-story study, the optional uses study provided by Ron Schneider, and Kirk McClure's study of alternatives deserves very careful consideration by this Commission before you make your determination. It may be that you
need to take this under advisement and spend a week, as an appellate court would do, going over all of the affidavits and relevant factors before you really make this determination, because it is so important, the process of preservation law is so important. We respectfully encourage you to diligently follow the process provided by Kansas historic preservation law regardless of any personal opinion for or against you may have regarding this project. Thank you.

MAYOR SCHUMM: Questions? Thank you.

MR. HITCHCOCK: Good evening. I am Steve Hitchcock, H-i-t-c-h-o-c-k, speaking on behalf of Town Peterson. Town is a resident of 900 block of Rhode Island but currently he is a resident of Brazil for several weeks so he asked me to step in and present just a few of his thoughts on the issue.

His take on a feasible and prudent alternative at 900 New Hampshire comes from his proximity to the project and he provided us with four reasons not to approve the hotel project. No. 1, the visual impact on a residential neighborhood. It doesn't show up real well but on the left is Town's front porch
and the roofline of 901 New Hampshire. One advantage, 900 New Hampshire would block Town's view of 901 New Hampshire but I'm not sure if he considers that in the plus column.

As others have noted, office space is available and retail space is available in Lawrence at this time and in danger of being perhaps overbuilt.

He is not convinced that the development will produce the quality jobs that Lawrence would like to have, both in the construction and then in the retail and services sector afterward.

And compatibility with the east side creative arts style of East Lawrence as it's developed over the past few years, so those are four factors that he considers to be kind of mitigating against the project.

An alternative that he would propose that is both feasible and prudent is grocery, market oriented. Looking on the U.S.D.A. site and their definition of food deserts Town was surprised, as were several others of us, that our picture of a food desert is usually an urban area, a large urban metropolitan area, but according to the U.S.D.A. Lawrence has areas of food deserts, a low income tract,
census tract with less than ideal accessibility
to fresh produce and high quality grocery
services.

Now, if you look, Ninth and New Hampshire
is there in a yellow star and this would be
identified there. One of the stumbling blocks
of an urban lifestyle in Lawrence where you
would choose to live without a car is your
ability to take care of basic tasks such as
food shopping without the use of a car.

This is, Town pointed out to me an earlier
proposal, he didn't have access to the later
proposals of the 900 New Hampshire building,
reducing it to three stories and turning it
into a 30,000 square foot building without the
need for an underground parking garage, a
surface lot in the available space on that lot
is his proposal here, with a variable use of
apartments, office space and a grocery store.

Now, the key, as Town pointed out, is the
income from the upper stories subsidizing the
cost of a grocery store which would meet the
needs of the urban core of Lawrence and he used
a residual approach. He's turned in a white
paper that goes into much detail that I won't
go into here but the key numbers he saw were an
overall lease rate of 10.50, his total development costs, and these were using the residual approach, using the numbers provided by the developers, and so that is the feasible nature of a grocery store project, and that's the Town Peterson proposal, and I thank you for your attention.

MAYOR SCHUMM: I have a question, please.

MR. HITCHCOCK: Yes, sir.

MAYOR SCHUMM: In his proposal he indicates that he's using $133 per square foot building cost --

MR. HITCHCOCK: Yes.

MAYOR SCHUMM: -- because that was what the cost was for a 70,000 square foot building across the street and yet he's only going to build a 30,000 square foot building. Would that number stand up for a smaller structure as compared to a larger structure? Usually there is an economy of scale, the larger you build something the cheaper per square foot it gets. So do you have any --

MR. HITCHCOCK: I wouldn't be able to answer that specific question, sir.

MAYOR SCHUMM: Okay. I had read this and I had a number of specific questions. It's going to be a shame that nobody is going to be
able to answer them because we have admitted it into the public record. One of the other things that I note in here is that there is no provision for property tax and so I don't know if he's talking about net leases or if he's talking about a net-net or triple net, it's hard to say.

MR. HITCHCOCK: Okay.

MAYOR SCHUMM: That's all right.

MR. HITCHCOCK: I'll try to get him to address that.

MAYOR SCHUMM: Okay. Thank you very much.

MR. HITCHCOCK: Thank you.

MR. BOLICK: My name is Zak Bolick, B-o-l-i-c-k.

MAYOR SCHUMM: Excuse me just a minute.

Let's take that slide down, please. Okay, thank you. All right, Mr. Bolick.

MR. BOLICK: My name is Zak Bolick, B-o-l-i-c-k. I am here tonight to publicly pronounce my support for this project as proposed and do ask that you approve the appeal of the HRC this evening.

Much like an earlier speaker, I don't have any money or vested interest in this project. However, I am a homeowner, a father, a husband
and a devoted employee of a 60-year-old locally owned and operated business here in Lawrence and I do care about the health and prosperity of this city. I understand the concerns of the neighbors and the East Lawrence Neighborhood Association as a former homeowner on the Rhode Island block but I disagree that 900 New Hampshire will encroach upon the historic environment that's present downtown. What I do think 900 New Hampshire will do will support the local downtown merchants. I think it will bring people downtown and I think it will provide an atmosphere of urban density and I think this is what the city, what the heart of our city needs.

I think one thing that everybody in this room can agree upon is that we don't want downtown to just survive but we need it to thrive. We have to put the things in place that bring people downtown. It has been argued tonight and prior to tonight that downtown does not need another hotel. However, I trust that Marriott and the developers have done their due diligence and they are still, thankfully, willing to pour their investment dollars into our downtown. I have not also seen opposition from the downtown hoteliers themselves.
I believe 900 New Hampshire can serve as a nice transition from downtown to the most immediate neighbors to the east, certainly more so than the empty and unsightly lot that we currently see in this downtown location. Originally proposed was a taller structure. It is clear that the development team has made changes to complement the environment. A smaller project than what is proposed this evening is not financially feasible, as stated by the City's contracted consultant, and I believe that this is clear free market evidence that there exists no feasible and prudent alternative than the proposal which is 900 New Hampshire as we see tonight. If there were why haven't we seen development on this lot prior to now? If this project is done right it can be good for the arts community immediately to the east and to the south of this project, it can be good for downtown Lawrence and it can be good for Lawrence as a whole.

In closing I would like to take this moment to thank you for your servitude and your leadership in our community and for stepping up on nights like tonight and staying up late to make the right decision. I implore you again,
please approve the appeal of the HRC this
evening and give 900 New Hampshire the
endorsement it needs to move forward. Thank
you.

MAYOR SCHUMM: Thank you. Any questions?

MR. BATEMAN: I'm Tim Bateman, B-a-t-e-m-a-n. I live at 3013 Flint Drive.
I'm here to support the appeal. I believe that
no feasible and prudent alternative exists for
this particular spot. One of the main things I
base that on is how long that lot has been
vacant. That lot has been vacant for over a
decade and if there were lots of alternatives I
figure by now somebody would have figured it
out and developed that land.

Also, the developer has already
compromised on the height to help ameliorate
the concerns of the neighbors and I think he's
done an excellent job at that, and from the
City's consultants they hired this project is
already on the low edge of financial
feasibility so I think reducing the size or the
height of the building any more is not feasible
or prudent.
In addition, I would like to say this, I believe this will benefit downtown greatly. Like they said, the more foot traffic and people in the downtown area, long term or short term, will definitely help out the community and make and help keep downtown vibrant. Thank you.

MAYOR SCHUMM: Thank you. Next speaker.

MR. REXROAD: Good evening. Gary Rexroad, R-e-x-r-o-a-d, 2824 Gill avenue.

Good evening, mayor and commissioners. I am here today to support this project and ask for a decision to overturn the HRC determination regards to the Ninth and New Hampshire project. While I believe the HRC acted in good faith, I do respectfully disagree with the decision that they have made and I believe that this project, if it is allowed to go forward, will be a positive attribute for not just that area but for the neighbors on both sides of that street and for Lawrence at whole.

While I believe this is a -- my position on this regards the HRC determination is to look at the transition that they have designed, the work that's gone into this transition, and
I believe that to be a very good transition from residential to commercial, and in fact, it's in scope of the property's design as evidenced by the zoning.

I also believe, it's my observation that no prudent or feasible alternatives exist at this time, as evidenced by a couple of things: One, the number of years the lot has remained empty and without development; the second point, the degree and the depth of discussion and compromise on all sides of this equation. I think it is a good indication that the process that we have in place works, that it's helped bring this design to a state that meets both the concerns that were expressed by the neighbors, by the HRC, and also up to the edge of feasibility for the developers.

The other point that suggests no other feasible options exist is that the feasibility study itself suggests that we are at a minimum in terms of what financial returns are for a property of this type.

And then last, the lack of other real proposals on the table. We have heard tonight from a number of folks a lot of different ideas that are there and some of those sound very intriguing, some of them less so, but the fact...
is there's only one proposal that's been
brought forward today, to date that's funded,
that's backed by developers with experience,
that's backed by a hotelier such as Marriott,
that's backed by an architect with a track
record of success and because of all those
factors I honestly believe that there is no
feasible, prudent alternative to the proposal
that they have today and I encourage you to
adopt it. Thank you.

MAYOR SCHUMM: Thank you. Next speaker,
please. Have you signed in, sir.

MR. FARMER: Jeremy Farmer. Yes.
F-a-r-m-e-r, 1135 Randall Road.
I just want to point out a couple of
things. First of all, my family has had a
home, two homes in East Lawrence, and they sold
the third one a few years ago, for the better
part of 50 years and I can say certainly that
the counsel for the neighborhood and members of
neighborhood does not certainly have a voice
for everyone in the neighborhood. Many folks

in that community of residents are very much
for this project and what it felt like to me
was the gentleman who came up here muddied the
waters and then was talking to you like you
were a bunch of third graders and it reminded me of a quote in Billy Madison that I just wanted to share: Mr. Madison, what you have said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response were you even close to anything that could be considered a rational thought.

And that's really, that is really kind of the consensus of everybody is just up here muddying the waters and I think we've lost sight of the facts. And what are the facts of this is that does a prudent and feasible alternative exist to this proposal? The current use of the corner, it's been vacant for a significantly long time. It's not generating any money. It's not generating any tax revenue, and as a matter of fact many of the same folks that are upset about this project are the same folks that are upset that there are no jobs in our community, and we have a developer who lives in our community who wants to spend money in our community to improve the economy of our community, to create jobs for folks who don't have it in our community, as many residents are traveling out of town currently looking for employment, buying gas in
other counties, spending money for lunch and
dinner in other counties, and we have a
developer who wants to come here and to help
solve and provide solvency for some of those
issues, and I think, especially in relationship
to the feasible and prudent alternative, if
there will be one or if there has been one
there should have been something that would
have been brought up by this point. I think it
is significant to remember that.

I just wanted to speak very briefly to the
U.S.D.A. food deserts thing and the need for a
grocery store in there since I kind of work in
that arena. There are -- East Lawrence is a
food desert and for, if you don't know what it
is, it basically is somebody who lives within a
mile of a grocery store. But what we don't
need is a store to go in that particular arena
that provides access to expensive, nutritious
foods, because a lot of folks in that area are
folks who are clients of ours and who certainly
could not afford really expensive foods in that
particular arena, so I think that, you know,
like in the 7,000 feet of retail space, I mean,
there could be a little market that could go in
there, you know, a little roadside, little
roadside market that could go in there that could certainly fit within the scope of what the developers have proposed, and I got an e-mail just as this were going and I just wanted to reiterate what Mr. Schneider said, that it in fact does say that the local political subdivision involved has determined, after consideration of all relevant factors, that no feasible and prudent alternative exists to the proposed project.

Developers have taken prudent and alternative actions at the request of Commissioner Carter and the rest of you to make sure this was done right and those feasible and prudent alternatives up to this point, they've done that to make sure that from right now forward that there are no other feasible and prudent alternatives for you.

We need to separate I think emotion from facts, and a lot of people in Lawrence have skin in the game, lot of people in Lawrence are very passionate about this, but I go back to two things that I try to remember all the time: No. 1, one we don't have to see eye to eye to walk hand in hand; and No. 2, our competition should not be each other, our competition should be other communities that are vying for
the same jobs, vying for the same tax dollars,
vying for the same developers. Johnson County
would kill to have somebody come in and put in
a project like this and we are very fortunate
that we have people in this community that are
willing to sink money and dollars into this
community to create jobs for people that don't
have them.

And I just wanted to close with what I
closed in my e-mail to you, that I'm not
sitting in your seat but I'm cheering you on as
you make this decision. Roy Disney made a very
profound quote. He said: It's not hard to
make decisions when you know what your values
are. May you choose what matters tonight.

MAYOR SCHUMM: Thank you. Next, please.

MR. FLANNERY: Joe Flannery,
F-l-a-n-n-e-r-y, 1316 Raintree Place. Lawrence
has known since the 1980s that if downtown is
to grow it has to be vertically. Any time we
can add infil development in the city core that
benefits the community as a whole. We need to
take advantage of adding residences and
services to our downtown while increasing our
tax base. This is an opportunity that we
should not let us pass by. I hope you support
this proposal. Thank you.

MAYOR SCHUMM: Thank you very much. Next speaker. Next speaker, please.

MS. ALDERSON: I'm Betty Alderson, it's A-l-d-e-r-s-o-n. I currently live at 1400 Lilac Lane. Lilac Lane, like the flower.

I have been sitting here wondering if I should speak to this issue or not. It's not an easy decision for any of you to have to make and I am not going to pass judgment on what you do or do not.

Several of my questions are, being a little gray haired more so than some of the prior speakers, we have just had one TIF project that didn't go in that area, and I'm not critical of that kind of a project but that particular project came in, as I recall, at about the time there was a downturn in the economy. There were structures on that lot that were torn down for something that was going to happen. Well, there wasn't any money to make anything happen and we know that our tax dollars had to pick up what didn't happen in that 10,000, 10,000 block of, whatever it was called, project.

I also know that repeatedly our city commissioners have said one of their goals is
to protect our core neighborhoods. This will
damage the historic district on Rhode Island
Street; it can't help but do that. All the
mitigation possible isn't going to take away
all the noise from the patio that's on the back
of that development right directly across a
very narrow alley and that noise will continue
and it will impact that, and I know there are
some times we have to do things that are
detrimental to some people for the greater good
but there are also times when we used to talk
about the rights of minorities and we need to
be concerned about the people who are going to

be taxed, because this project will need public
financing, and it is going to hit the people
who are the least able to pay for it under our,
some of our current taxing laws, and that also
is a consideration if there are other
alternatives that could be approached. There
may not be at this particular time in our
economy, I don't know, but thank you for
considering it. It's not easy and I do think
that there are these other things that may not
fall within the jurisdiction of what you have
to decide. Thank you.

MAYOR SCHUMM: Thank you very much. Next
speaker.

MS. HARRIS: Good evening. My name is Katherine Harris, H-a-r-r-i-s. I live at 916 Rhode Island. Directly across the street from me and through the houses I'll see what goes on, so, you know, I understand that this is a state law-guided process tonight where HRC has already made their determination based on the interpretation of state law and state statutes. Tonight this Commission is looking at whether feasible and prudent alternatives exist.

You have heard others tonight present ideas for sensible and reasonable alternatives. Obviously development on that corner makes sense if it respects the historic district it abuts. Protection of -- and in fact, you know, people are talking about economic drivers and things like that. There's a lot of city documents that can be read that show in fact that protection of historic properties and historic districts are recognized as economic drivers for cities. Lawrence's own 2020 report has a section on the benefits of preservation, so this isn't just we're against any development, we're wanting something that really continues to drive the city but doesn't disrupt this historic area.
While we may represent .1 percent of the total size of the city, that is because historically the historic part of town was smaller. When there were, you know, 10,000 people they didn't have as many houses as there are now, obviously. Historically development in relation to small lot residential areas have been small service businesses used by the neighbors. I think that is one of the threads you might have seen in many of the alternative ideas that have been presented this evening, repeated desires for a fresh food market, and not to be too crass but something I hear people say all the time is "I wish there was someplace just to get some toilet paper near downtown or in our neighborhood without having to drive across town."

So something that is really needed in the area, obviously, would present a better alternative. And certainly we, other speakers have shown that there are lots of other profitable and sustainable businesses that could go in there. When you talk to the neighborhood and you talk to the neighbors and when you talk about the people who use the services at downtown or near downtown on a
regular basis, because we're just a couple blocks away, you hear very strong desires for a pharmacy, day care center, which if the art garden moved to the north end of the lot, then the Salvation Army building could be used for a very lovely day care, fresh food, small business incubators, something that drives more economic development, and obviously the arts. The arts are a really big part of economic drivers in the city. I know you've seen recent reports on Final Fridays and how many outside people come to town for that one event a month, bringing money into the city, and, you know, we have this historic district, or this heritage district that we worked very hard to procure and not to have it go to another community in Lawrence, that's at the Carnegie Hotel -- I mean, I'm sorry, hotels on the mind; the Carnegie Library and that's just a few blocks from this lot, where obviously, because of the discussion about possible archeological site there, obviously a lot of this heritage district history happened in that area, something -- and that's, the goal is to have the heritage district bring tourism dollars to town, so there are so many alternatives for what can go into that space.
And in fact, Commissioner Carter, earlier when you asked about flag hotels not requiring underground parking you in fact provided even one more alternative to the proposed project for that site. So thank you very much for your service to the city and for hanging out with us and putting up with us, but obviously I hope that you find that there are prudent and feasible alternatives for the site. Thank you.

MAYOR SCHUMM: Thank you. Other speakers? Okay. As we so stated, we're going to give the applicant time for rebuttal to any information presented or any statements made, after which I will return the favor to the attorney for the property owners.

MR. WATKINS: Mayor and commissioners, the hour is getting late. Many of my comments are summarized in the memo I just handed you but I do believe we need to cover some ground related to some of the testimony regarding what the standard is and other comments related to the findings that you are to make tonight or at some point.

Mr. Schneider states a standard and asks for a literal reading of the statute and a
standard that is impossible to meet, but a list of uses and a couple of pages of statistics are not proposals for alternatives. They're lists. They're ideas. And he said that he took issue with one thing in the staff counsel's report related to the standard here and that was about a sale issue but that doesn't seem to be at issue here but what he didn't talk about, what he didn't take issue with is what the staff said the standard is.

This is paragraph 12 in Randall Larkin's memo. As it relates to the Commission's no feasible and prudent alternatives determination, a relevant factor is something more than a mere suggestion as to a possible alternative. A proposed alternative is only a relevant factor, which is what you are to consider, if it includes sufficient factual information that would support a conclusion that such proposed alternative is not only feasible but prudent. Has to be both. A suggested alternative use lacking factual support is not a relevant factor. It's irrelevant and must be ignored by the Commission in making its determination.

So what does make it relevant? Paragraph 13 says a suggested alternative use constitutes
a relevant factor if in the City Commission's view the suggestion addresses technical, design and economic issues related to the proposed project as well as the project's relationship to any community-wide plan.

Now, so you are to determine if there is a proposal in front of you that is a feasible and prudent alternative other than the one that has been presented by the applicant. Now, that, if a suggested alternative isn't relevant the applicant is not required to refute it. However, I think we need to get into some detail about what's been presented.

There were three proposals submitted to you in writing. Mr. Ralston submitted a proposal that had a nine-line pro forma. It calculates that designing 34 percent more rooms per floor in an all-apartment building utilizing the whole lot will generate some $400,000 a year, but Mr. Ralston's proposal includes no cost for the lot, his analysis of this, no operating expenses, no outside windows in some of the first floor units in violation of City Code, no building value or loan to value analysis, no courtyard for buffer to the historic area, no off-street parking, and loan
interest at four percent. This is one that you
don't have to rebut because it's not relevant
and it's not credible, let alone feasible or
prudent.

So the next proposal is Mr. Peterson's
alternative proposal, calls for a 10,000 square
foot grocery on the ground floor, 10,000 square
feet of office space on the second floor, and
10,000 feet of apartments on the third floor.
It calls for no parking and provides no design
documentation showing a lot or building layout,
delivery, off-street parking, perhaps 14 to 22
on-site parking spaces. No common area is
included in the calculations of rent, which
assumes that all 10,000 feet on each floor
constitutes leasable space. Now this
definitely impacts when you take 25 percent of
the leasable proposed space out of your
calculation on profit or feasibility, it skews
that calculation.

There is no assessment of the impact of
tenant finish on office space. One of the --
that practically can double the cost of a lease
space, a new space. There is an affidavit
submitted in the materials tonight from
commercial realtor Allison Moore that details
that there's 115,000 square feet of office
Most of this, of course, is not new, so it doesn't necessarily have a tenant finish component to it. It could if you improved it. But the fact of the matter is that there is a lot of space available for less than what it would cost for office space. Her affidavit goes on to talk about the fact that getting financing for speculative office space is difficult, if not impossible, so you need large users ready to occupy space if you're going to rent office space. That was the case at 901 where First Management was ready to lease eight or 9,000 square feet. She's not aware of any users in the marketplace that are looking for 5,000 or more square feet.

There is no valuation calculation to determine the loan to value amount and the low debt coverage ratios aren't really market rate, 1 to 1, 1.1 to 1, it's usually 1.25 to 1, and that's also included in both Bill Fleming's affidavit to you and Allison Moore's. Again, there is no evidence to support a market demand or financing availability for 10,000 square feet of speculative office space. All those factors I believe indicate that that proposal
does not address technical, design or economic
issues that are required to become a relevant
factor.

Third proposal is Mr. McClure's for a
building similar to that proposed by Peterson
but with retail and office development, no
apartments. It used a lot of the figures from
the applicant's proposal and he states as a
given that his proposal is economically
feasible. Conclusion of economic feasibility
is not a given for this proposed office space.
The proposal has no design details providing
anything regarding parking, deliveries, site
layout, any proposed mitigating measures. No
expenses are included for apartment operations
in calculating how much you're going to make on
this. No building valuation calculation is
provided and no analysis of tenant finish costs
and its impact on marketability, et cetera,
just like in the other one, so this proposal
has significant gaps in presenting and
analyzing design and technical and economic
issues.

Now, who's going to build 30 or 45,000
square feet of building downtown and not
provide parking? Better question is who's
going to rent it? What tenant wants a place
with no parking? What office wants a place
with no parking?

When you get into the tax issues, the
taxes paid by this project support parking that
support a project. If there's no project
there's no taxes. These taxes, by the way,
will go help pay for an existing TIF project
across the street that the City's supporting
largely now for public parking. This will
provide additional support for that. Without a
project you don't have anything there in terms
of supporting the payments for it.

There's no taxpayer money from others that
goes into this project. The taxes that are
generated to pay for the TIF come out of the
project and the public's not at risk. That was
in the testimony from Springsted earlier.

So the role is to determine if the
alternative proposals you have heard are
feasible and prudent using the relevant
factors, and the relevant factors are technical
and design and economic issues, of which you
see, and I think the testimony tonight

supports, are complex and multiple and I don't
think any of these proposals you have heard tonight address any of those.

This is not a rehab project that was talked about by Mr. Schneider, it's not a restoration, it's a vacant place that would be new space.

Rough calculations are not relevant factors. Eighty percent financing is not what the market is right now, it's 75 percent, 25 percent equity. All these proposals talk about 80 percent financing; again, not economically feasible, so you do not have a proposal in front of you tonight that meets the relevant factors for being a feasible and prudent alternative to what is on the table tonight.

We have people here who could answer questions. Mr. Fleming is here, who can answer questions about his affidavit regarding the financial calculations, market issues; Chuck Mackey is here, who can answer questions about his affidavit regarding hotel space, and Mike Treanor, and Mike and I are also available to answer any questions you might have.

MAYOR SCHUMM: Complete? Any questions for the applicant? Meaning any person of the applicant team. Thank you very much.
Mr. Schneider.

MR. SCHNEIDER: Thank you, Mayor Schumm and commissioners.

Commissioner Dever, I fumbled around trying to find the answer to your question about when that staff memo was given and I can give that information to you. That is a memo to David Corliss from Planning staff dated June 18th, 2012, regarding the consideration for an April 24th meeting, and I have the entire memorandum, if you want that I can submit that, but that is the date of it, and I think it is already in the record.

In response to Mr. Watkins' statements, I agree with his assessment and I want to emphasize that, again, that no feasible and prudent alternatives determination must be based upon a relevant factor, which is something more than a mere suggestion as to a possible alternative. We are in agreement on that. City counsel is in agreement on it.

A proposed alternative is only a relevant factor if it includes sufficient factual information that would support a conclusion that such proposed alternative is not only feasible but prudent. A suggested alternative
use lacking factual support is not a relevant factor and is irrelevant.

The case law in Kansas also recognized that individuals or opponents to a proposed project do not have the resources that most developers have. The case law in Kansas states specifically that the sophistication and scope and depth of such analysis should not be on the level that we have seen, for instance, from Springsted, truly accomplished professional financial consultants who have resources that it is not expected the individuals to have.

I suggest to you that alternatives have been presented that are more than sufficient and are in fact relevant for your consideration. Most importantly, the case law states, and as your own counsel identified in No. 6 paragraph of his memorandum, the burden of establishing that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from said use is borne by the proponent of the project. It is borne by the applicants here.

The only effort that we have that is on part of the record -- not on part of the record
but is part of the record is in fact the Springsted evaluation of a three-story building, as I understand it, that is composed of apartments and one floor of retail. There is not, and as I stated early, it does not address the alternatives that have been placed upon the proponent to show that a smaller project, more so a project with no parking, underground garage, and alternative uses is feasible and prudent. I don't think they have met their burden.

I know you have a rough job here. I know this is a project that many of you like. I know this is a project that we've heard some friends of mine support, people that we generally agree upon on most things. I remind you, though, you have a very specific limited task here. It is a task and a result you may not like but you are bound by law to consider, one, is there a feasible and prudent alternative to the project? Now there has been a suggestion by a gentleman, and I regret I forget his name, I know he's been on the Planning Commission and he's a well studied person of zoning uses, there is a suggestion by him that you should only look for alternatives,
feasible and prudent alternatives to the project as presented for a hotel. It is my understanding he is suggesting and arguing that the case law says you only and must look at the hotel, at the project as a hotel and are there any feasible and prudent alternatives for development of a hotel. If you look at the case law, and there are three or four cases and they have been identified by legal counsel for the City, that's not what it says. It's alternatives to the proposal.

If you looked at it otherwise someone could come up with a project, it could be determined to be adverse and harmful to the historic properties but given the project that they want to do, the single project that they want to do there would be no other alternatives so it must be approved, so logically it just doesn't work. This is a classic example where that kind of analysis of feasible and prudent doesn't work because there's got to be, according to the hotel owners, the name of the hotel, they want underground parking and they want off-street parking, they are determining the size of the units, they are determining the number of the units and they are determining the size of the lobby, so for them there is no
other alternatives. They have no feasible and
prudent alternatives except to do some
attention to the outside and cutting some
things down.

I believe that you have a challenge in
front of you. I know it won't be easy but I
believe that the law says under the
circumstances it just isn't reasonable to
conclude there are no feasible and prudent
alternatives other than this hotel as presented
and I think the evidence has been presented and
I think the applicant has not met their burden.

I would be happy to answer any questions.

COMMISSIONER AMYX: Mr. Schneider, in the
information that you provided for us that
pertains to the law and it says that there is

no feasible and prudent alternative to the
proposal and that the program includes all
possible planning to minimize harm, then on
another sheet of paper that you provided to us
it talks about the program means the proposed
project, --

MR. SCHNEIDER: Yes.

COMMISSIONER AMYX: -- and this is as
defined by Allen, Allen Realty, Incorporated,
v. City of Lawrence.
MR. SCHNEIDER: The first document you read was the statute itself, wasn't it?

COMMISSIONER AMYX: Right, correct. But this piece of paper here, you provide, the case law you provided to us talks about the program and the program and the proposal, aren't they one and the same?

MR. SCHNEIDER: They're essentially one and the same, yeah. I don't know why the statute was drafted that way but the Allen case clarifies and subsequent cases clarify, so they're saying if you find that there are no feasible and prudent alternatives to the proposed project you must find that the proposed project or program considers all possible opportunities to minimize harm, so in this situation if you were to find that there are no feasible and prudent alternatives to the hotel project you must then determine, No. 2, that all possible planning has been considered to minimize and reduce harm to the historic properties or the historic neighborhood. Does that make sense, Mr. Amyx?

COMMISSIONER AMYX: It does. Thank you.

MAYOR SCHUMM: Further questions?

Thank you very much.

MR. SCHNEIDER: Thank you very much.
MAYOR SCHUMM: Would any of the commissioners like to ask our legal counsel any questions or clarifications from what we've heard tonight?

COMMISSIONER CARTER: I would, couple.

MAYOR SCHUMM: Wait a minute. Is this for our legal counsel or is this --

COMMISSIONER CARTER: Yes.

MAYOR SCHUMM: Wait until he gets up here.

THE REPORTER: Speak into the mic, please.

COMMISSIONER CARTER: Mine is turned down pretty low. I'm in it.

COMMISSIONER CROMWELL: We don't have very good audiovisual.

THE SPEAKER: Yeah, we have a low budget.

COMMISSIONER CARTER: Okay.

MAYOR SCHUMM: Put it in the TIF.

(Laughter)

COMMISSIONER CARTER: You could weigh in, if you could weigh in on that question of alternatives to the proposal or all alternatives, Mr. Rasmussen's point earlier tonight.

MR. LARKIN: Yes, I understand what he said after Mr. Schneider kind of explained it in his. A proposed alternative can only be
considered by you if it's a relevant factor so
if a proposal has sufficient support, factual
support that could establish that it could go
on that property, then it's a relevant factor
that could be considered and then you can
consider and weigh the options at that point,
so it is not limited to the proposed hotel per
se, there could be other uses that might fit
under the zoning category, for example, but
those are open for consideration.

COMMISSIONER CARTER: Okay. I've actually
got three.

COMMISSIONER DEVER: Can I follow up on a
question?

MAYOR SCHUMM: Let's keep going on this
question. I'll let you go next, then I've
got --

COMMISSIONER DEVER: So the narrow
interpretation by Mr. Rasmussen isn't
necessarily wrong, it is just it can be a wider
interpretation?

MR. LARKIN: It can be wider than that,
right. I didn't want to --

COMMISSIONER DEVER: Not narrowing our
scope, as he inferred, but it could be one way
to evaluate the proposal, which is what he did
state that it may be incorrect for us to
consider other but -- because I wrote some of
that down and make sure I understand that.

MR. LARKIN: Right, and I think the case
law backs it up. There's some quot -- there's
no case law exactly on that point --

COMMISSIONER DEVER: Right.

MR. LARKIN: -- but there are a couple
cases that talk about a suggested alternative
use, which suggests that they're talking about
other things other than, you know, a specific

hotel or a specific grocery store or specific
whatever, so --

COMMISSIONER DEVER: It could be -- sorry.

But is there any specific case law that
narrows, that defines or narrows this question
in such a way that it would be wrong for us to
interpret this definition using that
interpretation?

MR. LARKIN: There's nothing that narrows
it down to that degree, no.

COMMISSIONER DEVER: I think I got that
answer, I'm not sure. You go ahead.

MAYOR SCHUMM: In your initial explanation
you used your hands as like a weighing scale,
you said, yes, if there's, if one of the
proposals met the test of the information that
is required, in other words, it looks like a valid alternative of a business model or a business opportunity that could be viable, then you could weigh it one against the other, so we have the right to deliberate to prefer based on our judgment which, which model would be the most appropriate?

MR. LARKIN: Right. You are to consider all the relevant factors and based upon the credible evidence that's presented here you can make a decision as to whether or not there is any feasible or prudent alternative and whether all harm -- all planning has been done to mitigate the harm, yes. That's your job sitting in the quasi-judicial function is to look at the evidence and then apply the law to it and make a decision.

MAYOR SCHUMM: And because there's been a lot of testimony tonight as to what we, what we should consider and what we shouldn't consider and in this case you consider this, in this case you consider something else, so I just wanted to clarify that we have those options.

Commissioner.

COMMISSIONER CARTER: Yeah, I may be asking the same thing again yet another way but just want to -- Mr. Schneider had, you know,
early in his presentation mentioned how very obvious it would be that there are alternatives, prudent, feasible alternatives, but my understanding from what I've read is that we actually need to be presented with what we deem to be a prudent, feasible alternative, that means could be funded, it means all the factors there, it's not, it's not -- in other words, it's what's presented to us, not what's on the approved list of uses or imagined, it's we need to actually be presented with a prudent, feasible alternative, no?

MR. LARKIN: Correct, and I think the Allen Realty case answers that question. A relevant factor is something more than a mere suggestion as to a possible alternative, so it can't be something theoretical, it has to be something that has some evidence to support it.

COMMISSIONER CARTER: Okay. And then one last one, unless there's follow-up on that one. In your, trying to remember what the number is here but in what you gave us earlier here when it does not involve the destruction of historic property it says, in quotes, that the courts do not construe the, quote, no feasible and prudent alternative as tightly. Can you help
elaborate on what not construing it as tightly actually means?

MR. LARKIN: This statute I think was originally written and it was aimed at properties, historic properties that were going to be demolished so the no feasible and prudent

standard makes sense to some degree when you talk about the demolition of a structure. We have a historic property; is there anything else that we can do to save this property?

It's kind of been expanded, it may have always been intended this way, but in this type of situation. In that case, that was the Reiter case out of the City of Beloit and you had a historic structure and it bordered a main street in Beloit and there was a vacant lot next to it on the main street and Casey's General Store came in to put in a property and eventually that was approved and that language comes from that case. You know, I don't know exactly the details, I don't know the arguments that were made, but the court said in determining whether or not there was any feasible or prudent alternative to the Casey's General Store because it did not involve destruction to the property they weren't going to construe it as narrowly or read that so
THE SPEAKER: That's a big deal.

MAYOR SCHUMM: Further questions?

COMMISSIONER AMYX: So, Randy, as we begin our deliberations and look at the stack of paper that we have in front of us the question that I would have is when it talks about, you know, taking the hard look at all the relevant factors is, okay, based on a comment or question Mr. Carter just asked about we were to take all the information from the public hearing tonight and make a determination of whether or not a feasible and prudent alternative does in fact exist after all the comment that we have received, should we make that decision first or should we list all the relevant factors as we see them at this point, have that hard look at what we consider to be all the relevant factors? What is the order, what is the process here, I guess, where we go?

MR. LARKIN: Consider the evidence, determine what you believe is a relevant factor, and it might be, you know, what's relevant, the relevant factors, and then from those relevant factors, the weighing of the evidence, like I said, to determine, take a
good hard look at it, and I think really this may go to what Commissioner Carter was talking about was, you know, when they don't look at it so tightly what they're really talking about is they want the City Commission to take, look at the evidence and make a decision based on that evidence, and that's what they mean by a good hard look and that's probably what they mean by not construing it so tightly is they want the common sense to rule.

MAYOR SCHUMM: Further questions?

COMMISSIONER DEVER: Yeah, and I think before I let you go, part of what I'm having trouble with is when you apply -- people like to throw around reasonable and prudent alternative and cite it out of content but removing the modifier of "the project" or "the program" from the language changes it 100 percent, in my book, because basically removing that word "project" from the use, and what's happened a lot tonight and happens a lot when I talk to people, this is -- we're not talking about demolishing a historical structure and I think that's kind of what I was reading into the case law that I read was they're talking about projects of a magnitude of either demolishing or adding onto or
altering a historic structure, a project or a

program, and less about building in an area
that might be relative or related to historical
environs, so for me trying to, you know, figure
out what the project means, does it mean any
possible project? Does it mean any alternative
hotel? Does it mean any alternative commercial
land use?

You know, for me this is what's difficult
because I thought the language was targeted
towards the act of altering a historic project
or property and the act of impacting that
historical structure and now we're applying it
to a vacant piece of land and its ability to
render any project a reality and I'm having a
hard time understanding how you can narrowly or
broadly interpret that.

MR. LARKIN: The project that appears in
the statute, what they're talking about is the
proposed project and then whether or not there
is a feasible and prudent alternative to that
project is what you are deciding, so you do --

COMMISSIONER DEVER: But the project is
often times an existing structure that is
alternative to --

MR. LARKIN: Correct.
COMMISSIONER DEVER: -- fixing up an old house, --

MR. LARKIN: Project may be --

COMMISSIONER DEVER: -- an alternative to tearing down a building --

MR. LARKIN: -- an addition to a -- excuse me.

COMMISSIONER DEVER: So that's what I'm trying to wrap my arms around, because you can throw all sorts of projects at us but the question is is there case law that helps this narrow us down, because I couldn't find anything that makes this, the term "project" relevant to this case and this situation.

MR. LARKIN: There is the case involving the Casey's General Store, that's the only one that's similar to this. The other ones involve either demolition --

COMMISSIONER DEVER: Exactly.

MR. LARKIN: -- of the church down here on 11th and New Hampshire, there is the case at Bethany Place in Topeka that had to do with maybe taking a little bit of the property and adding a parking lot, which may be relevant to this, maybe not, but for the purposes of what
we are doing here tonight, how, in our opinion
how we define that statute as the project is
what is being proposed by the proponent and the
City Commission has to determine whether or not
there is any feasible, prudent alternative to
that, that project, whether it has been planned
to minimize harm to the protected neighborhood.

MAYOR SCHUMM: Other questions? Thank
you.

I've got a question for the Planning
Director. Can you cite the number of plans or
documents that recognize some kind of density
or some kind of project that ought to be or is
recommended to be taking place at this corner?
Start with the Horizon 2020, is there anything?

MR. McCULLOUGH: There's Horizon 2020,
mayor. The one we think is appropriate and
relevant in this case was outlined in your
staff report, find it, if I can, the Downtown
Urban Design Concept Plan, which has been
incorporated into the Downtown Design
Guidelines, which essentially speaks to how we
transition from commercial district to the
flanking residential district. But certainly
Horizon 2020 speaks to downtown as the

entertainment and historic core of the city as
well, I mean, a commercial core of the city.

MAYOR SCHUMM: Okay. And then if my
memory serves me correctly, which doesn't do as
well as it used to do, but that project
originally was I think called Project 2000 and
so it started earlier than that, it started
probably a couple years ahead of that, and was
that land vacant for that length of, period of
time prior to 2000 or is it about 2000? Do you
know that?

COMMISSIONER DEVER: I can answer that
question, yeah. I looked into it and the site
has been vacant for almost 30 years, either as
a parking lot, there has been a structure on
the property, it was a historical gas station
on the northeastern part of that parcel, but
generally speaking it has been a parking lot
since at least 1981, for, the majority of the
property has been a parking lot or -- and that
small structure at the northeast, and then it
was cleared in like '99 from, based on aerial
photography that I looked at.

MAYOR SCHUMM: Okay. So it has been
without a use --

COMMISSIONER DEVER: More than --

MAYOR SCHUMM: -- since '99?

COMMISSIONER DEVER: Yes, from what I can
tell.

MAYOR SCHUMM: And prior to that it had a minimal use?

COMMISSIONER DEVER: Minimal. It was mostly, 75 percent parking lot.

MAYOR SCHUMM: Okay.

COMMISSIONER AMYX: There was a parking lot to the north side of where the Arts Center stands, there was a house that was just to the north of it and then the gas station, then there was the parking lot, the larger parking lot that was built north of where the smaller parking lot was next to the Arts Center as they expanded that, so yeah, there's a lot of vacant through there.

MAYOR SCHUMM: Okay. Any other questions for any member of staff?

Okay. Start the deliberation here. So first of all, we've got to decide what are the relevant factors in this case, and I will start out by saying that the questions I just asked the staff ought to be considered as relevant factors, number one, that there's planning documentation that indicates there ought to be something substantial at this location and it ought to be a transitioning kind of option for
downtown into the neighborhoods, so I think we have at least two planning documents that we've cited, that were cited in terms of being a relevant factor.

The next relevant factor I would suggest is the other question I just asked about how long it's been vacant and it's been vacant for, according to Commissioner Dever, since '99 and then had a minimal use prior to that for several years so I think that is also a relevant factor, so I'd ask that you consider those two statements as the beginning of generating the relevant factor list.

I'd be open to any other suggestions you might have.

COMMISSIONER CARTER: Well, I had a couple on here that, zoning/uses of nearby properties. I understand it's transitional from the neighborhood to the left but, you know, across the street with 901, I mean up and down New Hampshire this is certainly a compatible use with downtown zoning.

The detriment to nearby property, hearing those arguments, I guess I'm looking at some other detriments to some of the proposals. I see the underground parking, you know, given that the zoning is there for this type of
project, look at this particular project and
the, the traffic and other issues that are
dealt with with underground parking I think
are, do a lot to offset that detriment to the
nearby properties. I mean, if it was office
use or a hotel built without a parking lot I
don't even know if I could support that but,
downtown.

THE REPORTER: Talk a little louder for
me.

COMMISSIONER CARTER: All right, I'm just
going to talk to you, I don't need the mic.

(Laughter)

Right in her eyes. What else was the
other? Staff recommendation was one of the
relevant factors as well, take that into
account.

Is there a gain to the public by denying
this? There's another one that stood out to me

and I'm not, I'm not seeing that at this point,
the public at large.

MAYOR SCHUMM: You're not saying that or
you are saying that?

COMMISSIONER CARTER: I'm not seeing a
gain to the public, --

MAYOR SCHUMM: By denying it?
COMMISSIONER CARTER: -- overall Lawrence, by denying this, yes.

MAYOR SCHUMM: Oh, okay.

COMMISSIONER CARTER: Those are the others I would add to that list.

MAYOR SCHUMM: Can I ask you a question of probably your first statement there.

COMMISSIONER CARTER: Yes.

MAYOR SCHUMM: Relative to the parking, there has been issue this evening that says the parking adds cost to the structure, therefore the structure is, the cost of the structure is so large that it, it must be a larger structure to support the economics of it but if you don't have, I guess a relevant factor in my mind is the fact that if you don't have, if you don't have supporting parking in a number of these new facilities you're going to overburden the parking system at some point in the future in terms of how much parking is available, so while it does increase the cost of the overall structure, it's parking that is needed in order to support this development so it's kind of a circular argument so I really do believe the fact that these, this project is going to add parking to the system, it's adding spaces that are going to get used as opposed to something
on the street or even something on Rhode Island Street if the project were, if a project were to come to fruition so I think that the very fact that there is parking included in the project is a relevant factor in terms of supporting the overall downtown and the project, so, I mean, you know, I know we've kind of heard the negative of that but I believe that it's, it's very important to consider. I know you started on the parking and I didn't quite understand.

COMMISSIONER CARTER: Well, you said it better. I was struggling with it. What I was trying to say was really exactly that, that as far as a detriment to nearby properties because this parking has been dealt with underground it really mitigates the issues. I'm not sure I'd really be supportive of a significant development there, even though the plans call for it, if it didn't have its own parking, just as you just said actually. I mean, you don't want to exacerbate the problem with parking downtown.

MAYOR SCHUMM: Because the speakers, I don't know which one stated it but it's true, you don't -- this lot, zoned lot does not
require any off-street parking and that's the way a lot of downtown is zoned but if you overburden what's already, what's already there, then you create a negative to it so I look at the underground parking as a positive --

COMMISSIONER CARTER: Right.

MAYOR SCHUMM: -- relevant factor to be considered in this case.

Aron.

COMMISSIONER CROMWELL: We're talking about relevant factors between, as we compare the project we have in front of us to any feasible and prudent alternatives that we judge, that is the extent of the relevant factors that we are discussing here; right?

THE SPEAKER: Yes.

COMMISSIONER CROMWELL: Okay. Yes, parking is obviously a relevant factor. The alternatives that we have don't address the parking needs that we have downtown and so that is a critical relevant factor.

I mean, other relevant factors I, you know, when we compare these other alternatives to the ones that we have include, you know, the ability of, you know, downtown to accommodate what in some cases here is 40,000 square feet
of additional office space right now, it's just, I don't know that that, the capability is there. I haven't seen any evidence of that. In fact, we have some, we have received some evidence that would suggest that we can't so I think that is a relevant factor.

When we look at the possibilities of a grocery store that further gets at the parking issue and, you know, no matter what we're talking about, hundreds of people in all of these proposals, these alternative proposals we have at least a hundred additional people downtown. Without adequate parking it's not going to work.

There's no way that you could possibly want to lease a space without adequate parking. You can't be at a grocery store -- we've had this issue numerous times now when we've looked at grocery stores in downtown locations. There is not enough parking. You have to have a considerable amount of parking to handle a grocery store. Although a grocery store is, you know, a good idea I don't know that we've had any grocery stores who are, who are chomping at the bit to come downtown. We've asked numerous times, we've encouraged, and in
fact I've looked at a report before that suggests that this is not a good place for a grocery store.

So some of these things I think are really, I appreciate the efforts for the, couple of folks have gone through to present to us some alternatives to what we have. With the extent of all we have heard and all of the public input on this particular issue there's only a couple of alternatives that have come forward with any level of detail that I think that we can expect to consider and those are the handful that we have here and that's it.

You know, the fact that it has sat for so long, you know, I don't know that there's, I don't that there's a lot of additional relevant factors other than looking at, comparing the economic analysis that we had prepared for us by professionals today, you know, for the particular site at three stories versus the four plus that we had, you know, that they did the comparison so there is a relevant, that document I guess we have to -- do we have to state that's a relevant factor?

COMMISSIONER DEVER: Yes.

COMMISSIONER CROMWELL: Is that -- I mean, we really have to state all of these various,
everything that --

COMMISSIONER DEVER: Yes, yes.

MAYOR SCHUMM: Yes.

COMMISSIONER CROMWELL: Everything that's in the staff report is a relevant factor, you know.

COMMISSIONER AMYX: Well, they're possible factors, I mean they're just possible factors. One of the questions that I, I could have, if I can jump in, is do the economic issues and the public incentives of, and comparing those, the project that we have before us versus Mr. Peterson's project that did not have a public incentive requirement to it, is that a relevant factor? Is that -- does that make that project as an alternative or at least feasible alternative? Just -- and that's a question. Is that something that we need to take that hard look at?

COMMISSIONER DEVER: Can I interrupt? I would propose that I would throw out Mr. Peterson's proposal on the basis that there is information that was thrown at us and utilized but yet Mr. Peterson was unavailable to comment on the veracity of those claims, nor did he provide anyone in his stead who was
capable of providing us any technical details on this alternate proposal and in fact left out what I believe is very important details about the financial capability of this project to survive. On the surface it looks great but when you dig down to the details it, which I had many questions and I wasn't able to ask the author of this proposal and therefore I cannot consider it relevant because I couldn't get my answers, my questions answered, and not to mention but I wasn't able to meet the author of this document.

COMMISSIONER AMYX: Okay. And then one other one, if I could. The recommendation of the HRC and the decision that they made, is that a relevant factor here and to be considered as such?

MAYOR SCHUMM: I think it is relevant if you have a concern with how they reached that issue, how they reached their conclusion. I read through the minutes of the meeting and I think they gave it a pretty good hearing and they probably did a pretty good job of adhering to the state law requirements and I don't, so I don't think that that is a relevant factor. I think that stands, that decision stands as how they voted it and so I think it is only in the
reverse, if we found that there was grave error in the way they determined that, then we could use that as a relevant factor to overturn or to allow the appeal, allow for the appeal.

COMMISSIONER AMYX: No, and I believe that they used the standards of which they have to use in making a decision on what, you know, on the environs and that question, you know, that's not a question at all.

My question has to do with is a relevant factor need to be included and discussion happen and then, as we're doing right now, on the decision and recommendation that, or decision that they made on this project and whether it needs to be included as part of the debate that we have.

MR. LARKIN: In some cases the decision by the HRC could be a relevant factor. I agree with the mayor that in this case in my opinion it's probably not. In the case where it was involved there was some question regarding, I think it was actually the state historical preservation officer in that case, and what, they may have applied the wrong standard so there was some discussion of that during the case and they said, well, possibly the
reasoning, or the lack of reasoning of the
state historic preservation officer may be a
relevant factor. In my opinion in this
situation that may not be the case.

MAYOR SCHUMM: Okay, thank you. Let me go
back to one thing here that's kind of, kind of

the center part of this whole discussion
tonight and that was that we were presented
with three alternatives, and I agree with you,
Commissioner Dever, that the first one, I read
through it and I had, I probably have ten
questions and in that also it's, there's, to me
there's a flavor of social engineering going on
where you charge higher rents for the top two
floors and then subsidize a grocery store and
that's presupposing you can get higher rents,
that's presupposing you can even rent the
office space, and it's presupposing you'd still
get a grocery store, so if you call that a
feasible and prudent alternative it's pretty
far out there for me to grasp on and say, yeah,
that's a real deal, we've ought to go with
that.

Likewise the other two, the other two
sheets of generated numbers, yeah, they all --
I mean, I can show you how a restaurant will
make a lot of money, I can do it in about ten
minutes. I don't know that I'm going to find
an investor and I don't know that it's going to
make money but I can write it down on a piece
of paper and is that a viable alternative? Is
that, is that something that you hang your hat
on at the end of the day? I don't know.

Now, the only thing, then when you couple
that with the fact that it's been vacant for
the number of years it has if one of those
alternatives would have been that good, where
you can make 10, 12, 15 percent someone would
have been in there and doing it. I mean, you
know, the Moores are in the development
business. They didn't sit on that land, in
fact I think they paid a sizable service charge
to the City because they didn't get it
developed in time.

COMMISSIONER DEVER: Right.

MAYOR SCHUMM: So I've got to believe that
it was not, these things are not reasonable
alternatives to the question tonight. I mean,
if it were it would have been done or you'd
have bunch of people down here saying, here,
you know, I've got a checkbook, I want to write
the check, I want to do it. I don't see that.
I see some papers with some ideas on them, but
there again, according to staff memo, we can just disregard that if indeed we don't believe that they are reasonable, prudent alternatives.

I think the applicant did a good job with debating and dismissing those as reasonable alternatives, so that's kind of central for me in this whole discussion tonight, is there really someone out there that's going to write a check and take this project, take a project and make it something. I don't see them. I mean, I just don't see them.

COMMISSIONER DEVER: Yeah, I think one question we didn't address in this and probably needs to since Mr. Schneider brought it up was the question related to the request from counsel on behalf of his clients to the owner of record of the property, I think it's 9-10, L.C., corporation, as, and in the letter he simply asks what the price would be to buy it and in my estimation in real estate transactions I do not believe that if a sincere effort was being put forth to purchase that property, that the negotiations would start with tell me how much you want to pay when you know legally as a lawyer the project is under contract and it would be a violation of contract law to be negotiating, you know, on
interested in buying the property you should make an offer and frankly I don't see any dollars mentioned in this offer and if this was a sincere effort to acquire this property, which is something we need to consider, I do not believe that that was made clear, so if we want to talk about the opportunity to buy this and hold it as vacant land I believe it is important that all of us understand that that question as to the ability for an alternate purchaser to come forward, I don't think that was used, in my book.

MAYOR SCHUMM: Furthermore, it was, the statement said, the response from the 9-10, L.C., was it's under contract.

COMMISSIONER DEVER: Right.

MAYOR SCHUMM: So you can't sell it.

COMMISSIONER DEVER: Correct.

MAYOR SCHUMM: I mean, he would have to go to whoever has the contract out, which I presume is the developer, --

COMMISSIONER DEVER: Correct.

MAYOR SCHUMM: -- and offer to buy it there.

COMMISSIONER DEVER: That would be the
next logical step so that's why I want to make sure that --

MAYOR SCHUMM: So I don't see that as a viable offer either, or --

COMMISSIONER DEVER: And that was important for me because I think that has been something that's been thrown out is the no-build option, which is always an option, and what happens next, so I wanted to make sure that was brought forth in the record.

MAYOR SCHUMM: Very good. And I think we could include that as a relevant factor, that it's under contract, it's, there's not a option available to purchase it.

COMMISSIONER DEVER: And maybe we can inquire as to whether or not there has been any inquiries to the current contract holder as to what it would take to buy that from them.

MR. WATKINS: More than 650.

MAYOR SCHUMM: Going up.

THE SPEAKER: America.

MAYOR SCHUMM: Are there other relevant factors to --

COMMISSIONER CARTER: I guess I would wonder is it a relevant factor? Getting the
answer that we got there, that it does not involve the destruction of historic property,
the courts don't construe that no feasible and prudent alternative as tightly, I think that's relevant. I mean, it's relevant to my thinking but I don't know if that's -- it's not described clearly enough to whether or not it should be a relevant factor that we use.

COMMISSIONER DEVER: I just want to ask Randy a question. While we were thinking about it just came to my mind and I just want to make sure I --

MAYOR SCHUMM: Let's have him comment on --

COMMISSIONER DEVER: Who him?

MAYOR SCHUMM: -- Commissioner Carter's --

COMMISSIONER DEVER: Yes, please.

MAYOR SCHUMM: Randy, will you comment on Commissioner Carter's last statement, please. Can you repeat that, please.

MR. LARKIN: Could you repeat that.

COMMISSIONER CARTER: You bet. As a -- I'm wondering if it is appropriate to be a relevant factor the fact that the statement that when it does not involve destruction of historic property courts do not construe the no
feasible and prudent alternative as tightly.

MR. LARKIN: That's more of a statement of law so that would be -- I don't know that's a relevant factor. It's not really evidence in this case from which you can make your determination, it is more of law that would guide the decision that is being made.

COMMISSIONER CARTER: It's more a fact that it's not destroying historic property?

THE SPEAKER: That's the fact.

MR. LARKIN: Right, that that is a fact, right, that would be a relevant factor, that this is a project within the environs of a historic district as opposed to demolition of a historic building or something.

COMMISSIONER CARTER: Okay.

COMMISSIONER DEVER: May I?

COMMISSIONER CARTER: We wouldn't list it as a relevant factor, then.

COMMISSIONER DEVER: Okay, may I, mayor, may I ask him a question?

MAYOR SCHUMM: Yes.

COMMISSIONER DEVER: Something that came to my mind in the event that I considered one of the alternative proposals a feasible and prudent one would I also need to be considering what information they provided to me as to the
all possible planning aspect of our decision to be made? So in other words, is it a two-pronged process, in my mind, as an adjudicator, one would be to determine that there is a feasible and prudent alternative but in order for me to consider that do I need to also consider is that feasible and prudent alternative also address the question as to all possible planning? In other words, did they provide me drawings of what the back wall of that building is going to look like and how it's going to impact the neighborhood, what it's going to, what kind of construction methodology did they provide to do all possible planning to minimize harm?

MR. LARKIN: Are you talking about a proposed alternative use that's been presented?

COMMISSIONER DEVER: Yes, sir.

MR. LARKIN: I believe that if they show, if it's shown by anybody that a alternative use is a relevant factor and that it's feasible and prudent, since the developer or the proponent of the project has to show both prongs, once there is a feasible and prudent use or there is another than that pretty much ends all analysis and they don't really have to go any further I
COMMISSIONER DEVER: Well, the question presupposes that if I find a feasible and prudent alternative provided to me this evening, option A, B, C, D, or some other option, --

COMMISSIONER CROMWELL: Excuse me. Do you? Or is this a hypothetical that's --

COMMISSIONER DEVER: No, I need to know because in order -- because even if I did, if I were to, if one of us was to find that, that it needs to be discussed because the next prong is has all possible planning been done in order to minimize the impact and the question is does that come forward after? If we were to find a feasible and prudent alternative do we then also have to evaluate that against the second prong or would we have to wait for that alternative to be sent to and evaluated by Historical Resources Commission and then have its own merit and basis?

MR. LARKIN: Assuming that the feasible or prudent alternative was going to actually be built. I mean, the whole purpose is to determine whether or not this project which was determined by the HRC to damage, encroach upon the environs of the historic district, your
review is whether or not, based on the relevant factors, there is any -- there is no feasible and prudent alternative to the project that the HRC has determined would damage the neighborhood. If there is a feasible and prudent alternative and that's what you find, then that's pretty much it.

COMMISSIONER DEVER: Okay.

MR. LARKIN: I mean, that's it.

COMMISSIONER DEVER: Thank you.

MAYOR SCHUMM: Excuse me for just a minute, please.

COMMISSIONER DEVER: So your question was it doesn't matter if we don't find one?

COMMISSIONER CROMWELL: I just, yeah, I just -- if we, if there was no, if none of the alternatives that have been presented to us, if we don't deem that any of those are feasible or prudent, then I don't know that we need to worry about what the next step --

COMMISSIONER DEVER: Well, we wouldn't know.

COMMISSIONER CROMWELL: Maybe we need to tackle that and then move from there possibly.

COMMISSIONER DEVER: Yeah.

MAYOR SCHUMM: Are there any other -- I
think the way we'll do this is if there's any other relevant factors that we should list here, I've been trying to keep a list of them, then we need to have them now. I don't think there are doesn't sound like, sounds like everyone has everything on the table, then I think we ought to decide first of all, like you were just talking about, is there a reasonable and prudent alternative, then we can talk about has all the planning been done to mitigate any kind of negative situation regarding the project. Is that how you'd like to go?

COMMISSIONER DEVER: Yes.

MAYOR SCHUMM: Is that all right? Okay, so are there any other factors to consider? The ones I have written down, I might have missed one or two, but the first one is that there are plans, the Downtown Urban Design Guidelines is a plan that is a relevant factor.

Horizon 2020 with designating an entertainment and commercial core in downtown Lawrence.

We're not, another factor is we're not destroying historic property with our action. It has been vacant for 30 years or it's been vacant for, since '99 and it has a minimal use for 30 years.

Underground parking is a merit to the
potential development.

The zoning is compatible, there's a compatible use up and down the street.

There is a staff recommendation that is in favor of moving forward.

There is a gain to the, well, we've talked about a gain to the public. The gain to the public I see is that it enhances downtown and it provides for jobs, I mean, we've talked about that tonight a little bit.

And I'm sorry, that's all, that's all the ones I've written down, I don't know if there's any others or not.

COMMISSIONER CROMWELL: There were, I mean, there were others I think that were brought up and I think those were, we entered those into the record so that's what we're, they're here for. I don't know if a relevant factor is the other proposals that we have with numbers or not. I guess that's, the relevant factors are those that we are considering those against or, or not?

MAYOR SCHUMM: That's right, we talked about that, the fact that there is a relevant factor in that we don't, I mean, I said, I don't know if you agree, but that I didn't
think they were a viable alternative at this point because there's no -- they're just ideas on paper, they're not really, they didn't have enough substance.

COMMISSIONER CARTER: It did say that if we determine those options to be feasible and prudent, then they are a relevant factor; if we don't determine any of those three we talked about to be a feasible, prudent alternative, then they are not a relevant factor.

COMMISSIONER DEVER: So do we need to go on record just to state that, is that what you were getting at?

COMMISSIONER CROMWELL: I think that we go on record as saying it is a relevant factor that we have received these three alternatives and only these three alternatives at this time and it has been vacant for a very long period of time and then we weigh our relevant factors and we, you know, you know, when I'm weighing the relevant factors that we have identified thus far, and I think included in them has to be some sort of, and I think we've talked a little bit about the economics when we're looking at the numbers of the alternatives versus the numbers of the applicant's project, that, that I, the confidence in the numbers
working of the alternatives, I don't have that, the level of confidence in that working. I think that is a relevant factor and I think we enumerated some reasons for that.

I am at this point I think willing to say that based on the relevant factors that we have identified and that applying those to the alternatives that we have been given I don't find an alternative that is reasonable and prudent.

MAYOR SCHUMM: Is that a motion?

COMMISSIONER CROMWELL: Yes, sir.

COMMISSIONER DEVER: City manager is signaling.

THE SPEAKER: Yeah, procedure.

MR. CORLISS: I want to have Randy come up and guide a little bit on the motion because I think what he's going to advise you to do is to conclude your deliberations and then direct staff to prepare certain findings for your ultimate adoption. I want him to speak to that.

MR. LARKIN: Right. There are, and I just want to remind the City Commission there is two findings or two conclusions, one is regarding the feasible and prudent and the other one is
whether all planning programs have been done to
minimize harm and then after you have voted or
taken your vote, then we would like you to
direct staff to prepare findings of fact and
conclusions of law based upon your findings
here tonight.

MAYOR SCHUMM: Can we take two motions or
two --

MR. CORLISS: For ultimate review and
adoption by the Commission at a future meeting.

MR. LARKIN: Right, right. So there will
be, there will be two on the conclusions and

then one to direct staff to prepare findings of
fact for your approval later.

MAYOR SCHUMM: So we can vote for the
reasonable and prudent alternative and then we
can vote on the planning, all planning has been
taken care of that addresses?

MR. LARKIN: You could do that in one, you
can do that together, and then a separate
motion in order to do the other one.

COMMISSIONER DEVER: Well, yeah, and I
don't think we had discussed or put on the
record our reasons why we believe all possible
planning to minimize --

MAYOR SCHUMM: No, we were going to get to
that --
COMMISSIONER DEVER: -- the impact we have discussed so we should probably move --

MR. LARKIN: Right. You can do that all together.

MAYOR SCHUMM: All right, let's talk about the planning aspect of it. Well, let me just start out because I was involved in this quite a bit. I think we, I think we accept the applicant's presentation tonight in terms of the process of what it's gone through and to acknowledge the tremendous amount of change that's taken place and that's been to accommodate and make a better project available to the adjacent neighborhood and including taking off an entire floor in a meeting I was at so I think just this document here (indicating) demonstrates a substantial amount of mitigation in terms of the impact of the building project on the neighbor, on the neighborhood and so things like moving the higher part of the building from the interior of the block to the intersection, there's a space the Arts Center and the south wall of the project, there is a pull-back of, from the alley on the building at certain points, there is a courtyard there, there is a stepping down
of the building as it proceeds from the west to
the east, and, you know, just as they have
examined, and including, including the parking
that is contained in the building so it doesn't
impact the neighborhood as well, the
soundproofing and the sound consideration for
the mechanical rooms and the air conditioning
systems, that to me says they've done
extraordinary amount of work to protect the
environment and people around it.

COMMISSIONER CROMWELL: I guess looking at
it we have I think in front of us a project
that's been drastically improved from the
original iterations that came before us and the
reasons, a lot of the reasons for those
improvements are efforts to minimize the impact
to the historical neighborhood around the
property. We are now, at the alley they're
pretty close to half the height that it started
out originally. That is an example. The
historical features or design features of the
building are vastly improved and we have a much
more, a project which much, blends in much
better with the esthetic of our downtown, I
believe, and I think that that is very
important in minimizing the impact to, to the
neighborhood. The size reductions obviously
are very critical but also I think the design elements, too.

Now, I believe that, you know, that the HRC, the neighborhood groups, the neighbors, the developer, architect, everybody working together on this is what's led to this. When I look at this I don't see -- I really do believe that the potential harm to the neighborhood has been minimized by all that work and I appreciate all that work that has been done by all those people, including our staff, too.

MAYOR SCHUMM: Anybody else?

COMMISSIONER CARTER: I do want to, I would say I think you all more than covered it there, and I appreciate the applicant even recognizing early on that, you know, this process has made it a better project. It has been a long time coming but it's been made a better project for everyone concerned and it's good to hear that acknowledgment.

The, you know, that said, I don't know, I'm ready to make a motion, unless you want to weigh in.

MAYOR SCHUMM: Commissioner Amyx.

COMMISSIONER AMYX: Just couple of things real quick and for the public I want everybody
to understand that my connection to this
property has been something that has been very
tough for me. My grandparents owned the house
at 917 Rhode Island and the thing that's
happened is is that for quite a few weeks now I
think I have been taught and given an
understanding of law says what my role is in
this particular matter and that, you know, the
determination that I have to make is based on
the consideration of all relevant factors and
that there is -- and that I am to make a
determination that there is no feasible and
prudent alternative that exists to the proposal
and that the program includes all possible
planning to minimize harm, you've heard that
several times tonight, and I want to thank our
legal staff and our staff and all the work and
all the information that they provided. I want
to thank the developer for all the work that
they've put into the proposal. Mr. Schneider
and to the neighbors, I want to thank everybody
for all the assistance that they've given me
because it is a tough decision.

As I said, I have set on the back porch of
917 Rhode Island quite a few, quite a few times
in my life, you know, talking to my grandmother
and, you know, this is a tough deal, I gotta
tell you, but that is not my decision here tonight. My decision here is something totally different. I sit here and I look and I admire the amount of work of people that volunteer to serve on the HRC and other committees and to do a lot of the work for us and they make good decisions, they make great decisions based on what they have to, what they have to make decisions on and they did a very good job.

I look, at my business downtown I can look out the back door and there is this site, I mean, I could probably hit it with a rock if I could throw it far enough, but, you know, here again, you know, it is, it's a personal thing to me but, you know, my job is not to just walk in and make a decision that I would concur or believe that HRC did right, my job is to make sure that there is no feasible and prudent alternatives that exist.

The only thing that I could think of this morning, guys, was a miniature golf course on that site and I was trying to figure out how I could do the deal but that didn't -- you got really lucky that I didn't (indicating), but no, I didn't, that wasn't going to happen, so -- but I believe that, as hard as it is for
me to think that, you know, that there's something else, I believe that the applicant has probably done the job and that I can support this project. I, like I said, it would be easy for me to say that there's probably other things that we can consider but based on the information that I have before me, that I truly believe that there's not a feasible and prudent alternative and the best possible planning has been done to minimize harm to the historic property, so I will be supporting this project.

COMMISSIONER DEVER: And I think it's one thing we need to talk about that's, that all, about all possible planning, one thing that came to mind is the mitigation efforts that's going to be put forth by the developer as proposed to help protect and restore the Social Service League building. I mean, that's something that should not be overlooked as a part of this because we are talking about building for the future but preserving our past and I think a project like this has to do both, otherwise it won't pass my muster, let alone some of the factors we have to consider here this evening, if for no other reason but the planning and the iterations and the process and
the meetings and the mitigation that has occurred as a part of this project, if this isn't an example of all possible planning I don't know what is. I can't remember a project where we've seen literally a half dozen iterations of the same project, and it's gotten better every time and it's gotten better for the community every time, not for the developers and not necessarily for all the neighbors but it's gotten better for both as we move forward and for me that's what all possible planning demonstrates and so the key for me in this comment is that we are protecting one of the oldest ongoing businesses in our community, which is in a commercial zone and abutting this property and helping preserve that future and I think if HRC doesn't recognize that or historical planning doesn't recognize that factor I think we would be remiss so I wanted to put that on the record just saying that for me that is an example of the planning efforts that have been, taken place in this process.

MAYOR SCHUMM: Very good. Hugh.

COMMISSIONER CARTER: Mayor, I'd move that we make a determination that the program
includes all possible planning to minimize harm
to the listed properties.

    MAYOR SCHUMM: And?

    COMMISSIONER CARTER: I was just going to
go with that one first, planning. You want to
combine them?

    COMMISSIONER DEVER: Well, first you have
to do one, I think; right?

    MAYOR SCHUMM: Well, we've got, we've got
two.

    COMMISSIONER DEVER: We've got to make a
determination that --

    MR. CORLISS: What's the preferred
procedure?

    MR. LARKIN: Yes, I think since you've
discussed both of them do them both in one,
both findings in one motion and then do a
separate motion directing staff to prepare
findings of fact, so you might withdraw the
other motions and start over.

    MAYOR SCHUMM: First of all,
Commissioner Cromwell, will your withdraw --

    COMMISSIONER CROMWELL: Withdraw.

    MAYOR SCHUMM: -- your original --

    COMMISSIONER CROMWELL: Withdraw.
MAYOR SCHUMM: Okay. Commissioner Carter, will you withdraw your motion?

COMMISSIONER CARTER: You made a motion prior?

COMMISSIONER DEVER: He did previously and he got shot down.

COMMISSIONER CROMWELL: It was prior to the --

COMMISSIONER CARTER: I will withdraw my motion as well, yes.

MAYOR SCHUMM: Okay. Now I'd entertain a motion to put both parts of that in the same sentence with an "and," conjunction.

COMMISSIONER CARTER: So moved.

COMMISSIONER CROMWELL: I'll support that. Second.

THE SPEAKER: What was the motion?

COMMISSIONER DEVER: I'm not sure, what was the motion?

MAYOR SCHUMM: Let's be clear. Let's be clear on the motion.

COMMISSIONER CARTER: I'll just state it here. Mayor, I would move that we make a determination, based on the consideration of all relevant factors, that there is not a feasible and prudent alternative to the
proposal and that the program includes all possible planning to minimize harm to the listed properties.

MAYOR SCHUMM: Moved.

COMMISSIONER CARTER: Yes.

COMMISSIONER CROMWELL: Second.

MAYOR SCHUMM: Second. Okay, moved Carter, second Cromwell. All in favor say aye.

(There was a chorus of ayes.)

Opposed.

Carries five-zero.

Now we need a motion to have staff prepare the findings of fact. And what was the second part of that?

MR. CORLISS: And conclusions of law.

MAYOR SCHUMM: And conclusions of law.

Anyone like to move that?

COMMISSIONER AMYX: So moved.

MAYOR SCHUMM: Moved Amyx.

COMMISSIONER DEVER: Second.


COMMISSIONER DEVER: Teamwork.

MAYOR SCHUMM: All in favor say aye.

(There was a chorus of ayes.)

Opposed.

Carries five-zero.
Thanks, everybody, for coming down. Sorry it was, took so long but --

THE SPEAKER: Now we need to do --

MR. CORLISS: Need to proceed with 2 (b).

THE SPEAKER: -- 2 (b), which would be the TIF issue.

MAYOR SCHUMM: Oh, maybe they'll want --

THE SPEAKER: That will be 1:00.

MR. CORLISS: Well, I don't think it's going to take too long. Commissioners, item 2 (b) is for you to consider adopting on first reading the ordinance that would remove the east side of the 900 block of New Hampshire from the current TIF district, being our plan that then once the entire TIF hearing is conducted, which is going to be on July the 24th, that you would then consider second reading of that ordinance.

We also then want you to refer to this item to the Public Incentive Review Committee. Gary Anderson drafted the ordinance. If you have any questions we'll be happy to respond to questions.

MAYOR SCHUMM: All right. So we are going to be removing the property at 900 New Hampshire from the original TIF district?
MR. CORLISS: You will be removing the east side of the 900 block of New Hampshire from the current TIF district, correct.

MAYOR SCHUMM: But in the new TIF that we will create they are obligated to pay for their original charges that they would have paid for had we not removed them from that TIF district?

MR. CORLISS: What staff has prepared, what Diane and Brit have prepared is a memorandum that walks through the current obligations for that parking garage TIF debt, shows what we believe is the appropriate allocation for the 900 New Hampshire site and we have indicated that they will then pay, if this project proceeds, with first dollar first day TDD sales tax revenue to the City in an amount of $850,000, which we believe is the appropriate amount for this project to pay for the remaining debt on the 900 New Hampshire parking garage.

MAYOR SCHUMM: Okay. So if all this comes to be as presented, then the City will recover $880,000 which we may not have recovered?

MR. CORLISS: $850,000.

MAYOR SCHUMM: 850,000.

MR. CORLISS: That's our recommendation.

MAYOR SCHUMM: I like that.
COMMISSIONER AMYX: Mayor, question.

Dave, applicant made a statement during the consideration of the last item that there would not be any tax dollars that would be going into this, into this new TIF district and that it was, you know, from individual taxpayers, all the money was going to be coming from this district. Is there a guarantee to that? Because the last TIF district in this area that wasn't the case.

MR. CORLISS: Well, the proposal is for us to have a development agreement with the developers whereby they would pledge a number of different things. They would do the project, they would fill out all of the appropriate forms as far as our ability to get the property tax and the sales tax increment, and then they would also agree to the placement of a one percent TDD sales tax on their property, do all of the necessary procedures so that that sales tax would be collected. We then have estimates from Springsted as to how much revenue that is going to generate.

This project, if this project proceeds, then we have some idea as to whether or not those revenues will come. We will then be able
to receive that sales tax from the TDD that will come directly to the City. We estimate that it will take some period of time but we will eventually get our $850,000, which we believe this project, this site should contribute toward the existing parking garage. Am I answering your question?

COMMISSIONER AMYX: My question comes in, my question comes in is that people don't want to pay for this project. All the money that's going to be generated to cover the costs of the improvements on this site are coming from the

MR. CORLISS: From future --

COMMISSIONER AMYX: -- from the, from the -- I'm sorry?

MAYOR SCHUMM: We are still trying to record this so one at a time, please.

COMMISSIONER AMYX: Pay as you go means that it's only going to pay for the items from the money that is generated from that site. Is that correct? And we don't have an obligation?

MR. CORLISS: That is correct. As Diane outlined several hours ago, the --

COMMISSIONER DEVER: Yesterday.

MR. CORLISS: -- only exception to that, commissioner, is that we are also talking about
the Arts Common project for the Arts Center.

If that project proceeds, and we don't know if that will proceed, it is really a separate element, if we acquire that Salvation Army property that will likely include city tax dollars from the beginning to acquire that.

The Salvation Army will want to be paid all at once. We are only going to get five percent of the TIF revenue to help us with the Salvation Army acquisition for, until certain obligations are paid for the developer's TIF expenses.

After that is paid, then we'll be able to get all of our costs up to -- $900,000?

MS. STODDARD: Correct.

MR. CORLISS: For the acquisition of the Salvation Army property. Other than that,

commissioner, we don't have any City debt or any City financial obligation for the proposed project at 900 New Hampshire. It is a pay-as-you-go TIF in that regard, with the exception of the Arts Center element.

MAYOR SCHUMM: And furthermore, if the project doesn't generate a hundred percent of the costs that they incur there's no obligation on the City to make up that amount of money, they are just out the money; is that correct?
MR. CORLISS: That is correct, mayor.

MAYOR SCHUMM: Okay.

THE SPEAKER: We got it, then.

MAYOR SCHUMM: Any public comment on this item?

Okay, commission discussion?

COMMISSIONER DEVER: Mayor, may I ask the city manager a question?

MAYOR SCHUMM: Sure.

COMMISSIONER DEVER: I was not aware of or did not find the exact language dictating how or what legal means we were using to secure and that in what order the funds to help us pay down the parking garage.

MS. STODDARD: Commissioner --

COMMISSIONER DEVER: Remove this from the TIF district that's important because --

MS. STODDARD: Yes, and a couple of things. This evening you are only, you would only be considering action of first reading of the ordinance to remove. That requires two readings.

COMMISSIONER DEVER: Yes.

MS. STODDARD: So that action would not be final this evening.

COMMISSIONER DEVER: Understood. So that question needs to be answered before the second
reading, I believe, because we're removing it
from its obligation and therefore I think we
need to identify how that obligation is going
to be met.

MS. STODDARD: And with regard to that, we
were suggesting, again, as the city manager had
indicated, an $850,000 sum that would be repaid
to the City with the TDD sales tax revenue that
is generated within the district. The first
$850,000 of the approximately 1.1 million that
is projected to be generated in TDD sales tax
would be dedicated to the City toward the
parking garage expense.

COMMISSIONER DEVER: Does that say that in
this memo?

MS. STODDARD: Yes.

COMMISSIONER DEVER: Okay, great. Thank
you for clarifying that.

MS. STODDARD: Sorry.

COMMISSIONER DEVER: I didn't see that
anywhere. It's the first $850,000, first in?

MS. STODDARD: Correct, correct.

COMMISSIONER DEVER: Okay.

MS. STODDARD: Yes, and then any
additional revenue generated by the
transportation development district sales tax
245

would go then to reimburse the developer for
TDD eligible expenses.

COMMISSIONER DEVER: Okay, thank you.

MS. STODDARD: Uh-huh.

MAYOR SCHUMM: Anybody else, questions?

Commission discussion? As Diane points out, we're just setting, this is the first reading so there is another opportunity for the second reading, becomes final.

COMMISSIONER CARTER: Mayor, I would move to adopt on first reading Ordinance 8728 and refer to the Public Incentive Review Committee

to consider the proposed project if appropriate.

COMMISSIONER DEVER: Second.

MAYOR SCHUMM: Moved Carter, second Dever.

All in favor say aye.

(There was a chorus of ayes.)

Opposed.

Carries five-zero.

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CERTIFICATE

STATE OF KANSAS )

COUNTY OF JEFFERSON ) SS:

I, Candace K. Braksick, a Certified Shorthand Reporter in and for the State of Kansas, certify that I reported in machine shorthand the foregoing proceedings had on the 26th day of June, 2012.

I further certify that the foregoing transcript is a true, correct and complete copy of all of the proceedings of my shorthand notes as reflected by this transcript.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of July, 2012.

________________________
Candace K. Braksick
Certified Shorthand Reporter
Kansas Supreme Court No. 0386